Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

FW 1

Foreign Worker Manual

Canada

FW 1 Temporary Foreign Worker Guidelines

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Updates to chapter

Listing by date:

2009-09-29

This is the third of several updates to this chapter which will bring all TFW instructions together.

General revisions throughout the chapter include:

- "CEC" was changed to "LMO exemption" or "exemption";
- "HRSDC Confirmation" was changed to "LMO" (Labour Market Opinion);
- "HRCC" was changed to "Service Canada";
- "POE officer" was changed to "BSO" (where appropriate);
- "Foreign Affairs" was changed to "DFAIT";
- "Emergency Preparedness Canada" was changed to "Public Safety Canada";
- "RHN" was changed to "HMB"; and
- minor changes were made in sections 5.31, 8, and 11.2 to reflect new FTAs (i.e. Canada-Peru) coming into existence in addition to the NAFTA and CCFTA.

Section 5.1 – Overview – definition of 'work' [R2]

- Wording was clarified to be consistent with R2 wording.
- 'Wages and commissions' – the first sentence was removed because 'work' was already defined above.

Section 5.9 – Work without a work permit R186(h) – Athletes and Coaches

- Clarification was added that the "Major Junior A" league is also considered amateur.

Section 5.17 – Work without a work permit R186(p) – Health care students

- Links were added to OP 11, Section 9 and OP 15 to the note at the end of the section.

Section 5.20 – Work without a work permit R186(s) – Crew

- A heading and text was added for "Corporate Aircraft".

Section 5.23 – Application for a WP on entry R198 – persons who must apply outside Canada

- Clarification was added to the second bullet regarding medicals – FNs, visa exempt or not, should apply at a visa office if they require a medical (see also section 9.4).

Section 5.25 – Work permits requiring a Labour Market Opinion (LMO) R203

- Updated fifth paragraph and link regarding industry-specific programs with information about Sector Council support.

Section 5.26 – Work permits exempt from an LMO (Exemption Codes)

- The table has been updated regarding international agreements and to support the new exemption codes replacing T10 as per OB 145.

Section 5.27 – Agreements – R204

- Changes were made to reflect OB 145: provincial authority to select TFWs and other provincial pilots not in place. In addition, FTAs (NAFTA, CCFTA, GATS) were removed from the non-trade agreements table and a new table was created for FTAs, which will also support future FTAs coming into effect.

Section 5.31 Canadian Interests: Significant benefit—ICTs R205(a), C12

- (A) – General Requirements - Clarification was added to second bullet; and
- (F) – International Agreements – "NAFTA/CCFTA" was changed to "FTA" to make it more generic because Chile is no longer the only FTA in place that is similar to the NAFTA. Updated the table to support the implementation of the Canada-Peru FTA.

Section 6 - Determining the expiry date of work permits relative to dates on LMOs
- A note was added that HRSDC is no longer extending LMOs.

Section 9.4 - At the POE
- Clarification was added regarding medicals – FNs, visa exempt or not, should apply at a visa office if they require a medical (see also section 5.23).

Section 9.6 – In-Canada extension requests
- Removed first paragraph. If no medical is on record from when a POE officer issued a WP, CPC-V would NOT assume a medical was done, they would request the required medical.

Section 10.2 – Who can be issued an open work permit?
- Fixed the link in the last two bullets (changed from section '5.39' to '5.38').

Section 11.2 – Categories of work with validity periods which may not be exceeded
- Updated the table to support new FTAs coming into effect in addition to the NAFTA and CCFTA.
- Added 'Live-In Caregiver Program' to the table and inserted a reference to OP 14.
- Post-graduate employment – Added 'Can be used only once', changed maximum duration to three years and inserted a reference to OP 12.

Section 13.7 – United States government personnel
- Updated "USINS" to "U.S. Citizenship and Immigration Services (USCIS)" and "U.S. Customs" to "U.S. Customs and Border Protection (CBP)".

Appendix B – Canada-Chile Free Trade Agreement
- Changed title to "International Free Trade Agreements".
- Revised the appendix and the implementation of the Canada-Peru FTA as per OB 124.

Appendix C – Diplomats
- Updated the 'Canadian Employment Standards' table of wages and overtime pay as per DFAIT instructions and updated the References/links at the end of the appendix.
- Section 3 – Private servants of foreign representatives – removed the last 3 paragraphs and inserted references to OP 14 and IP 4.

Appendix G – NAFTA
- Section 3.8 – Removed an incomplete note concerning the definition of "Profession".
- Section 4.3 – Clarified the second bullet point.

2009-08-28
This is the second of several updates to this chapter which will bring all TFW instructions together.

Section 3.1 – Required forms
- Removed forms IMM 5581 and IMM 5582 from the list as they have been replaced by the e-application system.

Section 5.10 – Work without a work permit R186(i) - News Reporters
- Added an exception for management and clerical personnel of Special Events that are six months or less in duration

Section 5.13 - Work without a work permit R186(l)—Clergy
- Corrected section reference from 5.38 to 5.39 – Charitable or religious work

Section 5.26 - Work permits exempt from LMOs (confirmation codes) - Table
- Revised text for T21, T22, T23, and T24 to allow for new FTAs

Section 5.31 (D) - Canadian Interests: Significant benefit—intra-company transferees R205(a), C12 – Qualifying job positions – Specialized knowledge workers
- Added helpful 'tips'

Section 5.34 - Canadian interests: Reciprocal employment—International youth exchange programs R205(b), C21
- Changed program name to "International Youth Programs"
- Revised by DFAIT

Section 5.39 - Canadian interests: Charitable or religious work R205(d), C50
- Incorporated updates from OB 64
- Fixed CRA link to charitable organizations

Section 13.2 – Camp Counsellors
- Incorporated updates from OB 64
- Fixed designated country link

Section 13.4 – Foreign camp owner or director
- Re-worded

Appendix E – International student and young worker employment
- Changed title to "International Youth Programs"
- Revised by DFAIT

Appendix G – NAFTA – section 3.7 - How long can a work permit be issued
- Incorporated updates from OB 85 (duration of work permit for professionals)

2009-07-13
This is the first of several updates to this chapter which will bring all TFW instructions together.

Section 4.0 – Instruments and delegations
- Reference to IL3 for delegations

Section 5.1 – Departmental Policy: Overview
- Amended definition for examples of activities not considered to be work

Section 5.7 – Departmental Policy: Work without a permit R186 (f) – On-campus employment
- Reference to OP12, 5.20

Section 5.17 – Departmental Policy: Work without a permit R186 (p) – Health care students
- Clarification on students not included in this exemption

Section 5.22 – Departmental Policy: Work without a permit R186 (u) – Implied status
- Added reference to OP11, 24

Section 5.25 – Departmental Policy: Work permits requiring HRSDC confirmation R203
- Modifications to Low Skilled Pilot instructions. Updates from OB 113 incorporated.

Section 5.37 – Departmental Policy: Work related to a research, educational or training program R205 (c) (i), C30
- Modified exclusions as it applies to foreign students
- Modified definition of foreign nationals in medical training who require work permit and labour market opinion

Section 5.38 – Departmental Policy: Public policy, competitiveness and economy, R205 (c)(ii)
- Section C – Reference to OP 12, 5.24
- Section E – Reference to OP12, 5.23

Section 5.39 – Departmental Policy: Canadian interests: Charitable or religious work R205 (d), C50
- Further definition of when this exemption applies

Section 13.2 – More guidelines for unique situations: Camp counsellors
- Further definition of when this exemption applies

2009-05-05
Appendix E – International Student and Young Worker Employment: Alphabetical List by Country, Alphabetical List by Program, SWAP and WHP

- Clarifications were made to the Canada-Germany Youth Mobility Programs.

2008-06-11
Appendix E – International Student and Young Worker Employment, Alphabetical List by Country

- Replaced the 12-month validity period with 24 months for the SWAP and WHP programs with Australia.

Appendix E – International Student and Young Worker Employment, Alphabetical List by Program: SWAP

- Replaced the 12-month validity period with 24 months for the SWAP program with Australia

- Replaced the 12-month validity period with 6 months for the SWAP program with Italy.

Appendix E – International Student and Young Worker Employment, Alphabetical List by Program: WHP

- Replaced the 12-month validity period with 24 months for the WHP program with Australia.

- Replaced the 12-month validity period with 6 months for the WHP program with Italy.

Appendix J – Temporary Foreign Worker Units: Expanded Services
Added appendix with new information on TFWUs.

2008-04-21
Please refer to new Operational Guidance in section 5.25 of this Chapter.

2007-12-05

Section 5.25 – Information Technology Workers

- added new link to OM FW99-03 entitled Facilitated Processing of Employment Authorizations for Information Technology Workers.

Section 5.34

- Replaced faulty hyperlink;
- Changed acronym ACEE to PCEE;
- **Canadian Interests: Reciprocal Employment – International Youth Exchange Programs R205(b) C21**
- added "where applicable" to second paragraph to underscore that some agreements are being negotiated without numerical limits.

Section 5.38 – Spouses or common-law partners of skilled workers, C41

- added information on location of NOC skills levels;
- replaced faulty hyperlink;
- renumbered and renamed Canadian interests: Public Policy, Competitiveness and Economy, R205(c)(ii). Subsequent sections renumbered accordingly.
- **Section 5.39 – Canadian interests: Charitable or religious work, R205(d)C50**
- **Section 5.40 – Self-support, R206**
- **Section 5.41 – Applicants in Canada, R207**
- **Section 5.42 – Humanitarian reasons, R208**

Appendix G — Section 4– NAFTA – Intra-Company Transferees

- added "outside Canada" to 4th bullet to clarify context of continuous employment.

2007-06-29

Section 5.2 – Work without a work permit R186(a) – Business visitor
- added general criteria
- added information on after-sales service of equipment or machinery controlled by computers
- added guidelines on who is not a business visitor
- added guidelines on employees of companies contracted by Canadian companies

Section 5.7 Work without a work permit R186(f) – On-campus employment
- the need for officers to include a notation on the study permit is emphasized

Section 5.9 Work without a work permit R186(h) – Athletes and Coaches – Spouses
- changed "spouses" to "spouse" to clarify that only one spouse is eligible

Section 5.11 Work without a work permit R186(j) – Public speakers
- added information on commercial speakers

Section 5.12 Work without a work permit R186(k) – Convention Organizers
- clarified R186(k) does not apply to Canadian events

Section 5.13 Work without a work permit R186(l) – Clergy
- added list of documents that can help officers determine the genuineness of a job offer
- added section on processing work permit applications from clergy, ministers and priests

Section 5.15 Work without a work permit R186(n)
- replaced “scholars” with “students”

Section 5.17 Work without a work permit R186(p) – Health care students
- added instructions concerning foreign medical students destined to British Columbia, Ontario or Alberta

Section 5.20 Work without a work permit R 186(s) – Crew
- guidance added on ineligible foreign truckers

Section 5.25 Work permits requiring an LMO R203
- added details on contents of HRSDC website
- added a section on the Low Skill Pilot Project
- under National Confirmation Letters, added a section on Information Technology Workers concerning acceptable degrees
- removed reference to National Confirmation for Canada Research Chairs, which has been replaced by the application of Labour Market Opinion (LMO) exemption C30 for all research chair positions
- added reference to Section 6 for information on determining work permit expiry dates relative to dates on LMOs

Section 5.29 Canadian interests: Significant Benefit – General Guidelines R205(a) C10
- added information assessing significant social or cultural benefit to Canada

Section 5.30 Canadian interests: Significant benefit – Entrepreneurs/Self-employed candidates seeking to operate a business R205(a) C11
- added Quebec CSQ cases to section on temporary resident applicants

Section 5.31 Canadian Interests: Significant benefit – Intra-company transferees R205(a) C12
Restructured section and added information on:
- general requirements
- qualifying relationship between Canadian and foreign employer
- qualifying relationship between employer and temporary foreign worker
- qualifying job positions
- elimination of 25% residency rule
- one year work permit for multiple specific projects
- harmonization of NAFTA and general provisions (added work permit cap)

Section 5.34 Canadian Interests: Reciprocal employment – International Youth Exchange Program R205(b) C21
- added weblink

- clarified DFAIT's role
- added information on repeat participation

Section 5.35 Canadian Interests: Reciprocal employment – Academic exchanges R205(b) C22
- added information on visiting professors

Section 5.37 Work related to a research, education or training program
- added research chairs at Canadian universities
- replaced the term "Program 1" with "Work related to graduation requirements"
- clarified requirements for foreign trained medical interns, externs and resident physicians
- added that provision applies
- added that work practicum for career colleges and language schools not more than 50% of total program of study
- Subsection A - work permits for spouses or common-law partners of skilled workers - added physical residency requirements
- Subsection B - work permits for spouses or common-law partners of foreign students - clarified that C42 and C43 applies only to students of Canadian universities
- Subsection C - post graduation employment - does not apply to graduates of distance learning programs - applies only to students of Canadian educational institutions located in Canada - clarified calculation of 90 day application period - added CIDA student requirements
- Subsection D - post-doctoral fellows and award recipients - added information on occupation coding
- Subsection E - off-campus employment - added information on work permit validity and work permit remarks

Section 6 – New section on expiry dates of work permits relative to LMO dates

Section 9.4 – Added information on the need to apply abroad when medical is required

Section 11.2 – Categories of work with validity periods which may not be exceeded

Appendix E – International Student and Young Worker Employment
- updated table

Appendix G – NAFTA
- intra-company transferees - harmonized with general provisions

Appendix H – Sales
- added information on conventions

Created new Appendix I on mergers and acquisitions

2007-03-06
Modifications were made to section 5.39 E of the chapter concerning "Off-Campus Employment", to reflect a change in policy indicating that the time spent by a foreign student in a co-op term can now be counted as part of the time spent on full-time studies when applying for an off-campus work permit.

2006-04-28
Section 5.39E – The guidelines regarding off-campus employment pilot projects have been replaced by a new set of instructions for the national Off-Campus Work Permit Program for International Students.

2006-01-24

Section 5.2 – The guidelines regarding personal employees of non-residents have been clarified to provide a clearer focus on whether the worker is 'predominantly outside Canada' as required for the work permit exemption.

Section 5.25 – Notification has been added that HRSDC has extended the national labour market opinion for Canada Research Chair positions to July 2007.

2005-07-28

Section 5.2 – Guidelines regarding members of boards of directors entering Canada as business visitors have been added.

Section 5.8 – Slight modifications to the performing artist guidelines have been made, including the addition of guidelines regarding "time-limited engagement."

Section 5.9 – Clarification regarding professional and semi-professional athletes and coaches has been added.

Section 5.23 – Instructions regarding persons who may apply for a work permit at the POE have been amended to reflect the August 2004 regulatory change.

Section 5.24 – Instructions regarding persons who may apply for a work permit in Canada have been amended to reflect the August 2004 regulatory change. In addition, guidelines have been added regarding existing work permit holders applying at the POE.

Section 5.25 – HRSDC national confirmation letter for exotic dancers was removed. Reference to HRSDC low-skilled program is included.

Section 5.27 – The Fulbright Program between Canada and the United States (U.S.) was added to the list of international agreements. Other agreements which have expired were removed from the list.

Section 5.31 – Clarification that an intra-company transferee does not have to be a current employee of the company transferring them was added. The transferee must have worked for the company for one year during the three-year period before the work permit application is made.

Section 5.38 – Further clarification regarding eligibility of institutions for C30 was added.

Section 5.39 – Various modifications were made to C43, post-graduation employment provisions, including an allowance for part-time and self-employment.

Section 5.41– Further clarification regarding the interpretation of "unenforceable removal order" was added.

Section 8 – Under "Procedures," officers, when issuing a Visitor Record, are advised to refer to R186 or to the fact that a person is "authorized to work." Additional instructions have been included in a note regarding Temporary Resident Visa (TRV) issuance and coding.

Sections 9.5, and 10.1 – Any medical restriction should be noted on the work permit, but not the client's medical condition which determined the restriction.

Appendix A – Guidelines regarding the interpretation of "bar, restaurant, or similar establishment" have been added, along with guidelines regarding festivals and WWE camera operators.

Appendix C – The FAC circular notice regarding household domestic workers was replaced with Circular Note No. 0579. The major change is the removal of the requirement for these workers to be functional in one of Canada's official languages.

Appendix E – Various minor changes to the International Young Workers Exchange Programs have been made.

Appendix G – “Actuary” has been included under the profession of “Mathematician”, and Plant Pathologist has been included under the profession of “Biologist”.

2004-11-12

Additions have been made to sections 5.26 and 5.39 of the Temporary Foreign Worker Guidelines (FW 1) Manual. These new sections provide guidelines for issuing work permits to certain international students under pilot projects for off-campus work and extensions of post-graduation employment.

Specifically, the amendments are as follows:

Section 5.26 now includes off-campus employment in the list of “Exemption Codes.”

Section 5.39 now includes instructions in Section C for processing applications for one-year extensions of post-graduation work permits under pilot projects with certain provinces. A new section has been created at the end of 5.39 (Section E) to provide instructions on issuing work permits for off-campus work to international students under pilot projects with certain provinces.

2004-08-30

Amendments have been made to sections 5.27, 5.30, and 5.39 of the Temporary Foreign Workers Guidelines (FW 1) Manual. These changes are all in respect to provisions for the issuance of work permits to provincial nominee candidates and their spouses.

Specifically, they are:

Section 5.27 provides for the issuance of a work permit, without requiring an LMO from HRSDC, to any applicant who has been nominated for permanent residence by a province.

Section 5.30 now contains provisions for the issuance of work permits to foreign nationals being considered for provincial nomination on the basis of their intention to undertake business activity in the province.

Section 5.39 provides for the issuance of open temporary work permits to spouses of provincial nominees who hold valid work permits, irrespective of the skills category under which the nominees’ occupation falls.
All staff who have responsibilities for the issuance of temporary work permits are urged to review these new sections. As well, in reading these sections, staff should keep in mind that all other relevant provisions of the FW manual with respect to the issuance of work permits continue to apply.

2003-09-10

A minor correction has been made to the FW manual, Appendix G: North American Free Trade Agreement, Annex A, University, College and Seminary Teachers.
Note: **There is a $150.00 processing fee for a work permit.**

2003-06-23

In Section 5.39, move Note under the title for C42.

2003-05-13

Major additions/changes introduced to the FW 1 manual recently published:

Section 5.2 Work without a permit (R186(a)) – Business visitor
- specifies document requirement for after-sales service (same as for NAFTA)
- addition of intra-company training and installation activities that meet business visitor requirements

Section 5.8 Work without a permit (R186(g)) – Performing artists
- "Employment Relationship" as used in 186(g)(ii) is defined

Section 5.11 Work without a permit (R186(j)) – Public speakers
- "Seminar" and "Commercial speaker" are defined

Section 5.25 Work permits requiring an LMO (R203)
- updated Web addresses given for national confirmation letters
- cooperation between HRSDC and Citizenship and Immigration Canada (CIC). This section was added to encourage communication between the two departments and to give some examples of where it would be appropriate.

Section 5.29 Canadian Interests: Significant benefit – General guidelines (R205(a)), C10
- text clarified to provide more flexibility on using C10 where there is economic benefit demonstrated

Section 5.30 Canadian interests: Significant benefit – Entrepreneurs/ Self-employed candidates seeking to operate a business (R205(a)), C11
- temporary resident applicants—additional flexibility added to guidelines, and a reference to the importance of provincial endorsement in assessing cases
- sole or partial ownership of a business—additional flexibility given inability of HRSDC to provide formal LMOs. Additional questions provided to aid officers in considering these applications.

Section 5.31 Canadian interests: Significant benefit – Intra-company transferees (R205(a)), C12
- paragraph on non-qualifying business relationships added
- eligibility criteria chart
- more detailed explanation of senior managers added
- extensive editing of the eligibility criteria for specialized knowledge workers for the sake of clarification; does not constitute a fundamental change

Section 5.37 Work related to a research, educational or training program (R205(c)(I)), C30
- The program for "Scientists…invited by any Canadian institution…provided the Minister of Sate for Science and Technology has…issued letters of acceptance" was eliminated (formerly #3 on the list). This was not used and no approval structure was or is in place.

Section 5.40 Canadian interests: Charitable or religious work (R205(d)), C50

- additional note: Paragraph defining the difference between a charitable worker (who needs a work permit) and a volunteer (who does not)

Appendix A Artistic/Performing Arts

Paragraphs were added on guest artists coming to perform on Canadian television or radio, and the World Wrestling Entertainment (WWE).

Appendix G NAFTA - The actual text of the agreement was removed and a link to the text is provided.

1. What this chapter is about

This chapter explains the Regulations and CIC policy with respect to temporary foreign workers. It also provides guidelines that will assist officers in interpreting the Regulations and explain the programs that fit under these Regulations.

2. Program objectives

To facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities.

To protect the health and safety of Canadians and to maintain the security of Canadian society.

3. The Act and Regulations

Immigration objectives	A3(1)(g)(h)(j)
Application before entering Canada	A11(1)
Obligation answer truthfully	A16(1)
Obligation relevant evidence	A16(2)
Examination by officer	A18(1)
Obligation on entry	A20(1)(b)
Temporary resident	A22(1)
Dual intent	A22(2)
Right of temporary residents	A29(1)
Obligation temporary resident	A29(2)
Work and Study in Canada	A30(1)
Loss of temporary resident status	A47
Contravention of Act employing foreign national not authorized to work	A124(1)(c)
Contravention of Actdue diligence must be exercised by employer	A124(2)
Definitions of “work” and “work permit”	R2
Medical examination required	R30
Passports and travel documents	R52
Issuance of temporary resident visa	R179
Conditions imposed on members of a crew	R184
Specific conditions	R185
No work permit required	R186
Business visitors	R187
Worker class	R194
Worker	R195
Work permit required	R196
Application before entry	R197
Application on entry	R198
Application after entry	R199
Issuance of work permits	R200
Application for renewal	R201
Temporary resident status	R202
Economic effect	R203
International agreements	R204
Canadian interests	R205

No other means of support	R206
Applicants in Canada	R207
Humanitarian reasons	R208
Invalidity	R209

3.1. Required forms

The forms which may be required are shown in the following table:

Form Title	Number
Work permit	IMM 1102B
Application to Change Conditions or Extend my Stay or Remain in Canada	IMM 1249E
Application for a work permit	IMM 1295B
NAFTA application for Trader/Investor Status (work permit)	IMM 5321B
Advanced notification of Performing Artists	IMM 0060B
Medical Report Form	IMM 1017E
Medical Surveillance Undertaking	IMM 0535B
Use of Representatative/Release of Information	IMM 5476B
Verification Form (E-Application)	(formerly IMM 5581)
Student Acknowledgement and Consent Form (E-Application)	(formerly IMM 5582)

4. Instruments and delegations

Refer to the appropriate annexes in the delegation annexes in the designation and delegation instrument (IL3) listing the delegations.

5. Departmental policy

5.1. Overview

The Regulations specify that the **worker** class is a class of persons who may become **temporary residents**. A worker may be authorized to work without a work permit R186, or may be authorized to work by the issuance of a work permit pursuant to Part 11 of the Regulations.

Definition of "Work" [R2]

"Work" is defined in the Regulations as an activity for which wages are paid or commission is earned, *or* that competes directly with activities of Canadian citizens or permanent residents in the Canadian labour market.

" Wages or commission"

This includes salary or wages paid by an employer to an employee, remuneration or commission received for fulfilling a service contract, or any other situation where a foreign national receives payment for performing a service.

What is an activity that "competes directly"?

Officers should consider whether there is entry into the labour market. Questions to consider:

- Will they be doing an activity that a Canadian or permanent resident should really have an opportunity to do?
- Will they be engaging in a business activity that is competitive in the marketplace?

If the answer to either of these questions is 'yes', the foreign national intends to engage in a competitive activity, which would be considered "work".

Examples of "work" include, but are not limited to:

- a foreign technician coming to repair a machine, or otherwise fulfil a contract, even when they will not be paid directly by the Canadian company for whom they are doing the work;
- self-employment, which could constitute a competitive economic activity such as opening a dry- cleaning shop or fast-food franchise. (A self-employed person may also be considered to be working if they receive a commission or payment for services);
- unpaid employment undertaken for the purpose of obtaining work experience, such as an internship or practicum normally done by a student.

What kind of activities are *not* considered to be "work"?

- An activity which does not really 'take away' from opportunities for Canadians or permanent residents to gain employment or experience in the workplace is not "work" for the purposes of the definition.

Examples of activities for which a person would not normally be remunerated or which would not compete directly with Canadian citizens or Permanent Residents in the Canadian labour market and which would normally be part-time or incidental to the reason that the person is in Canada include, but are not limited to:

- volunteer work for which a person would not normally be remunerated, such as sitting on the board of a charity or religious institution; being a 'big brother' or 'big sister' to a child; being on the telephone line at a rape crisis centre. (Normally this activity would be part time and incidental to the main reason that a person is in Canada);
- unremunerated help by a friend or family member during a visit, such as a mother assisting a daughter with childcare, or an uncle helping his nephew build his own cottage;
- long distance (by telephone or internet) work done by a temporary resident whose employer is outside Canada and who is remunerated from outside Canada;
- self-employment where the work to be done would have no real impact on the labour market, nor really provide an opportunity for Canadians. Examples include a U.S. farmer crossing the border to work on fields that he owns, or a miner coming to work on his own claim.

There may be other types of unpaid short-term work where the work is really incidental to the main reason that a person is visiting Canada and is not a competitive activity, even though non-monetary valuable consideration is received. For instance, if a tourist wishes to stay on a family farm and work part time just for room and board for a short period (i.e., 1-4 weeks), this person would not be considered a worker.

We recognize that there may be overlap in activities that we do not consider to be work and those activities which are defined as work not requiring a work permit in R186. However, the net effect (no work permit required) is the same.

Part 9, Division 3 – Work without a permit

R186 and R187 describe the types of work which a foreign national is authorized to do without having to obtain a work permit.

Part 11, Division 2 – Application for work permit

The general rule is that a foreign national must apply outside Canada for their work permit, however, R198 and R199 describe the situations where a work permit may be obtained at the POE or within Canada, respectively.

Part 11, Division 3 – Issuance of work permits

R200 outlines all of the criteria and provides authority for the issuance of a work permit. R203 to R209 provide the eligibility criteria.

5.2. Work without a work permit R186(a)—Business visitor

R187 defines the criteria for entry as a business visitor. This broad category facilitates the entry of persons to Canada who intend to engage in business or trade activities, and parallels the NAFTA business visitor criteria. (See Appendix G) R187(3) provides the general criteria that must be met, and R187(2) provides specific examples, which are meant to be illustrative. Included in this category are persons providing after-sales service. (See Appendix H)

General Criteria

- There must be no intent to enter the Canadian labour market, that is, no gainful employment in Canada.
- The activity of the foreign worker must be international in scope, that is, there is the presumption of an underlying cross-border commercial activity, e.g. after sales service;
- There is the presumption of a foreign employer:
    - The primary source of the worker's remuneration remains outside Canada
    - The principal place of the worker's employer is located outside Canada
    - The accrual of profits of the worker's employer is located outside Canada.

After-sales service

After-sales services include those provided by persons repairing and servicing, supervising installers, and setting up and testing commercial or industrial equipment (including computer software). "Setting up" does not include hands-on installation generally performed by construction or building trades (electricians, pipe fitters, etc.). R187 also applies to persons seeking entry to repair or service specialized equipment, purchased or leased outside Canada, provided the service is being performed as part of the original or extended sales agreement, lease agreement, warranty, or service contract.

There are instances where companies purchase specialized equipment or machinery that is controlled by computers. The computers in turn interact with this hardware through software, robotics for example. The manufacturer of the equipment may subsequently upgrade the software that provides enhancements to the previously sold hardware and subsequently sell this upgraded software to the customer. This is similar to upgrading the operating system software on a home computer.

After-sales service also includes situations where the sales agreement or purchase order is for a software upgrade to operate previously sold equipment, a service person coming to Canada to install, configure, or give training on the upgraded software should receive consideration as a business visitor, as long as the after sales service activity is clearly articulated in the new sales agreement or purchase order. A sales agreement or purchase order for upgraded software is a new contract for a new product. The fact that the upgraded software will be used to operate older equipment that may no longer be under warranty or under a service agreement, is irrelevant.

Service personnel coming to perform service work on equipment or machinery that is either out of warranty, or where no service contract exists, continue to require an LMO and a work permit.

As with NAFTA, **hands-on building and construction work is not covered by this provision**.

Warranty or service agreement

Service contracts must have been negotiated as part of the original sales or lease agreements or be an extension of the original agreement. Service contracts negotiated with third parties after the signing of the sales or lease agreement are not covered by this exemption. If, however, the original sales agreement indicates that a third company has been or will be contracted to service

the equipment, R187 applies. Where the work is not covered under a warranty, a work permit and an LMO is required.

Not Business Visitors (NAFTA Professionals and Other Service Providers)

Where a Canadian employer has directly contracted for services from a foreign company, the employee of the foreign company performing the services for the Canadian company requires a work permit.

This situation arises most often in the context of NAFTA. The service provider is not to be considered a business visitor simply because they are not directly receiving remuneration from a Canadian source. Since there is a contract between the Canadian company and the foreign worker's employer there is a labour market entry. Since that foreign employer is receiving payment for the service that is being provided, it is deemed that the worker is receiving payment from a Canadian source. Consequently, the worker cannot receive consideration as a business visitor.

Examples:

A Canadian airport undergoing expansion engages the services of an American architectural firm located in the U.S. The American architectural firm sends one or more of their architects to Canada to work on the project on site. Since the architects are working in Canada, and since their American employer is receiving payment for their services, the architects do not meet the business visitor criteria and cannot receive consideration as business visitors.

A U.S. based company provides marine maps and computer software to commercial and private mariners, including sports fishermen. The U.S. company has no subsidiaries or affiliates in Canada. The company wants to map the Lake of the Woods, most of which is in Canada, using sophisticated marine mapping devices. The end product will be marine maps and computer software that will assist mariners in navigating the Lake of the Woods. These products will be commercially available to anyone who wants to purchase them. In order to do this, the company needs to send two of their employees along with a boat load of this equipment to circumnavigate the Lake of the Woods, take depth and other readings, and return to the U.S. with their findings. Their findings will in turn be used to produce the marine maps and computer software. Since there is no Canadian employer contracting for their services, and since the U.S. company will be the direct beneficiary of the foreign worker's efforts, business visitor criteria are satisfied.

Documentation

As was the case for persons providing service under NAFTA, all business visitors coming in to do after-sales service for work periods of longer than two days must be documented on a Visitor Record. This requirement serves both as a facilitation and a control measure. (See Appendix G, section 2.6.11.)

Supervisors

This provision also covers persons who enter Canada to *supervise* the installation of specialized machinery purchased or leased outside Canada, or to supervise the dismantling of equipment or machinery purchased in Canada for relocation outside Canada. As a guide, one supervisor can normally be expected to supervise five to ten installers or other workers.

Trainers

R187(2)(b) also covers persons entering Canada to provide familiarization or training services to prospective users or to maintenance staff of the establishment after installation of specialized

equipment purchased or leased outside Canada has been completed. It also covers intra-company trainers and trainees.

Intra-company training and installation activities

When a person is coming to provide training or installation of equipment for a branch or subsidiary company, they are considered to be business visitors. The same prohibition against hands-on building and construction work as for after-sales service applies. The foreign national should maintain their position in their home branch and not be paid by the Canadian branch above expenses. This provision may also apply to a trainer or specialized installer under an after-sales contract by the foreign branch (with the same conditions applying), as long as the service is provided company-wide and not just for the Canadian office.

Board of Directors' meetings

A person attending a meeting as a member of a board of directors may enter as a business visitor. Normally these people attend quarterly meetings. They are legally charged with the responsibility to govern an organization or corporation by, for example:

- selecting and appointing a chief executive officer;
- governing the organization by setting broad policies and objectives;
- accounting to shareholders for products, services and expenditures.

While a board member may be well remunerated for their advice and expertise, they are considered to be business visitors under R187. There is a great deal of international mobility in this activity, and there is no real direct entry into the Canadian labour market.

Employees of short term temporary residents

Persons employed in a personal capacity *on a full-time basis* by short term temporary residents, for example as a domestic servant, personal assistant or nanny (caregiver), would generally meet the business visitor criteria in R187(3)(a) and (b) and may enter as such. If the visiting employer extends their stay in Canada such that their employee is no longer considered to be working predominantly outside Canada or their employee's primary source of remuneration can no longer be considered to be outside Canada, then that personal employee is no longer considered to be a business visitor and may be required to seek a work permit and an LMO to continue working. A stay of longer than 6 months would normally be found to exceed the threshold required by R187(3)(b).

Employees of Foreign Companies Contracting Canadian Companies

There are situations where foreign companies contract Canadian companies to provide services for them in foreign jurisdictions. It is not uncommon, where distances are great, that the foreign company will send one or more of their employees to Canada to ensure that the Canadian company is doing the job that they are contracted to do in a manner that meets the approval of the foreign company. Sometimes, these foreign nationals may be in Canada for up to two years.

Where a foreign company sends an employee to Canada to control or inspect the quality of a product that they have contracted, the foreign employee should receive consideration as a business visitor as long as:

- That employee remains an employee of the foreign company;
- That employee remains on the payroll of the foreign company;
- The foreign company's principal place of business remains outside Canada.

For example, a foreign infrastructure company is building a new university in the foreign country. The foreign company contracts a Canadian architectural firm to do the architectural work. The foreign company wants to send one or more of their engineers to Canada to ensure that the work

of the Canadian architectural company is being done according to their standards and desires. The foreign employees may be in Canada for up to two years. These employees should receive consideration as business visitors as long as:

- They continue to be employed by the foreign company;
- The foreign company remains the beneficiary of their efforts;
- Their activities continue to be directed by the foreign company, and
- They continue to be paid by the foreign company.

The fact that they will be in Canada for more than six months is irrelevant, since their principal place of business remains outside Canada.

5.3. Work without a work permit R186(b)—Foreign representatives

R186(b) applies only to foreign representatives and to their personal servants who have been accredited by the Department of Foreign Affairs and International Trade (DFAIT). It applies only to the official functions of the foreign representative or servant. Also included in this category are diplomatic representatives to UN organizations such as the International Civil Aviation Organization (ICAO), and the UNHCR. (See Appendix C.)

5.4. Work without a work permit R186(c)—Family members of foreign representatives

Family members of persons who have been accredited with diplomatic status may work without a permit if they are issued a “no objection letter” by the Protocol Department of DFAIT. Such persons may also seek a work permit in order to satisfy potential employers that they have the right to work. (See Appendix C.)

5.5. Work without a work permit R186(d)—Military personnel

R186(d) applies to military and civilian personnel in possession of movement orders outlining that they are coming to Canada from countries designated under the terms of the *Visiting Forces Act*. For a list of such countries, refer to Appendix F. Military personnel should not be confused with “Military Attachés” who are diplomatic agents in diplomatic missions. The accreditation of military personnel is coordinated by the Department of National Defence**.**

Military personnel and civilian components coming to Canada under the terms of the *Visiting Forces Act* as staff or to attend any school or training unit are considered on active duty. They are exempt from work or study permits.

Military personnel designated under the VFA are also exempt from requirements for a passport under R52, from a temporary resident visa under R190, and from foreign national medical examinations under R30. These exemptions do not apply to civilian components or to family members. Civilian components and family members are, however, exempt from the temporary resident visa fee R296(b).

See Appendix F for procedures on processing military personnel and their family members.

5.6. Work without a work permit R186(e)—Foreign government officers

Canada has concluded agreements with other nations that provide for periods of employment in each other’s territory at the federal or provincial levels. Officers come to work for a department or agency of the Government of Canada or of a province. They do not work for a foreign mission or international organization and are not accredited by DFAIT.

Officers at the EX (executive) level of government should be in possession of a contract from the Public Service Commission (PSC) outlining the terms of the agreement, which may or may not be reciprocal. PSC involvement is not required for positions below the EX level, however, for assignments of longer than three months, a formal letter of agreement should be signed by the deputy head of the department, an authority in the officer’s organization, and the officer coming to Canada.

At arrival at a POE they should be given temporary resident status for the duration of the contract. Requests for extension, though not normally required, should be facilitated.

Family members:

Family members of exchange officers who qualify for admission under R186(e) who have non-reciprocal contracts require an LMO. However, spouses may qualify for an exemption under the Spouses of Skilled Workers Program R205(c)(ii), C41.
(See section 5.38)

Family members of exchange officers admitted under R186(e) who have a Public Service Commission contract which is reciprocal are exempted from requiring an LMO under R205(b), C20. Fee exemption applies. Open work permits may be issued.

5.7. Work without a work permit R186(f)—On-campus employment

See OP12, Section 5.20

5.8. Work without a work permit R186(g)—Performing artists

The table below outlines which types of activities according to CIC/HRSDC meet the requirements of R186(g), and which types of activities will require an LMO and work permits.

Entry without a work permit	Work permit and LMO required
• Foreign-based musical and theatrical individuals and groups and their essential crew, outside bars and restaurants; • street performers (buskers), DJs working outside a bar, restaurant or similar establishment; • a foreign or traveling circus; • guest artists (not employed) within a Canadian performance group for a time-limited engagement; • World Wrestling Entertainment (WWE) wrestlers (& similar groups); • persons performing at a private event, such as a wedding; • air show performers; • artists attending or working at a showcase.	• Bands performing at bars, pubs, restaurants, etc.; • Exotic/Erotic (new NOC title) dancers performing in a bar or club; • actors, singers, crew, etc. in Canadian theatrical productions, shows, circuses; • any individual involved in making films, TV, internet and radio broadcasts (with the exception of co- production agreements where actors, etc. will be issued work permits exempt from an LMO under R204, exemption T11); • any individual who will be in an employment relationship with the organization or business contracting for their services in Canada; • a performer in a Canadian-based production or show.
Note: The following persons will be granted entry as visitors pursuant to Regulations other than R186(g): as business visitors: film producers; film and recording studio users (limited to small groups renting studios not entering the labour market); as guest speakers: persons doing guest spots on Canadian TV and radio broadcasts.	

"Time-limited engagement" referred to in R186(g)(i)

For a guest artist performing with a Canadian group, a "time-limited engagement" allows for flexibility, but as a general guideline, CIC/HRSDC considers that an unlimited number of rehearsals and performances over a two-week period are reasonable. Alternatively, an unlimited number of rehearsals and up to eight performances over a six or seven-week period would also qualify a guest artist for inclusion under R186(g)(i). However, a foreign national who rehearses and performs with a Canadian orchestra for an entire season, for example, would need a work permit and an LMO.

"Employment relationship" referred to in R186(g)(ii)

A foreign performing artist would not be in an employment relationship if they were merely hired to perform a single concert or short series of concerts. For example, if a couple hired a band to perform at their wedding, or a festival hired a singer to perform twice in a weekend, there is no employment relationship created even where contracts are signed. Alternatively, if a dinner theatre hired a foreign singer/dancer to perform five nights a week on a weekly basis (four weeks or longer), an employer-employee relationship would be created and a work permit and an LMO would be required. Or, if a city contracted a foreign puppeteer to do three shows a day in a park for a whole summer, this would also be considered an employment relationship. Essentially, contracts for short-term 'gigs' would not create an 'employment relationship' between an artist and the organization contracting for their services and R186(g)(ii) would be met. A longer-term contract, where the performer is expected to perform on a regular basis and usually in the same venue, would be considered an employment relationship, and a work permit and LMO would be required.

Documentation and fees

Officers may use the Advanced notification of performing artists IMM 0060B as needed. However, (as for pre-IRPA) they are not a regulatory requirement. Fees for individual work permits apply. In cases where members of a performing group of greater than three persons require work permits, the ($450) group fee will apply when the group applies at the same time in the same place.

For further information on artistic occupations and guidelines, including a list of the types of establishments considered to be **"bar, restaurant or similar establishment",** see Appendix A.

5.9. Work without a work permit R186(h)—Athletes and coaches

R186(h) allows foreign teams and individuals (whether professional or amateur) to compete in Canada, and foreign athletes to be members of Canadian amateur teams. Examples of persons who would meet the requirements of this Regulation include:

- amateur coaches or trainers;
- amateur players on Canadian teams (includes major junior A level and lower teams) (e.g., athletes admitted under this category for a whole season should be documented on a Visitor Record);
- foreign pet owners entering their own animals in a show (e.g., dog handlers);
- jockeys racing horses from foreign-based stables;
- racing car drivers;
- persons attending professional team tryouts.

Note: If, upon entry and in anticipation of acceptance to a professional team, an athlete wishes to obtain a work permit for the season, officers may issue a work permit according to the guidelines below.

Professional and semi-professional coaches and athletes

Professional and semi-professional coaches, trainers and athletes working for Canadian-based teams require work permits, however, given the international mobility in this field, they may be exempt from an LMO pursuant to R205(b), C20.

A professional or semi-professional coach is a worker who earns significant income from coaching - enough to support themselves or, if part-time, contribute a significant portion towards supporting themselves in Canada. They may be coaching an amateur athlete, team or club, but they themselves are still 'professionals'.

Professional teams, for which foreign athletes would require a work permit, include those in the National and American Hockey Leagues, the Canadian Football League, Major League Baseball and its affiliates at the A, AA and AAA levels, the National Basketball League and the North American Soccer League.

Professional and semi-professional referees

Professional referees require work permits and LMOs, except for leagues that have reciprocal arrangements for Canadian referees. National Hockey League (NHL) referees who are U.S. citizens or permanent residents qualify for work permits under such a reciprocal arrangement, and may be issued work permits pursuant to R205(b), exemption code C20. Reciprocity is assumed for judges and referees at top-level professional competitions, but referees for lower level games or competitions require an LMO unless reciprocity is proven.

Spouses

Professional athletes are classified under Skill Level B in the National Occupational Classification, and, as such, their spouse is eligible for an LMO-exempt work permit pursuant to R205(c)(ii), C41.

5.10. Work without a work permit R186(i)—News reporters

R186(i) applies to news reporters and their crews coming to Canada for the purpose of reporting on events in Canada. Journalists working for print, broadcast or Internet news service providers (journals, newspapers, magazines, TV shows, etc.) are eligible, provided the company is not Canadian. Employees of a foreign news company who are resident correspondents are included, however, this does not include managerial or clerical personnel. Exception: Managerial and clerical personnel are included for special events that are six months or less in duration.

Blimps

From time to time, companies bring in blimps such as the “Goodyear Blimp” to assist in the media coverage of major sporting events. The landing crew enters by land in order to set up the specialized equipment necessary for the safe operation of the blimp while it is in Canada. The members of this landing crew should be treated as part of the broadcast crew for the purposes of entry into Canada, and require no work permit.

Media crews on tourism promotional tours

Media crews (including writers, print, video, film and broadcast journalists, as well as technicians such as camera operators) producing travelogues, documentaries or tourism promotional material, require work permits. However, they may be admitted under R205(a), exemption C10 which applies to foreign workers who provide significant benefit to Canada, provided the following conditions are met:

For North American media crews:

- the crews must be taking part in a promotional tour at the invitation of Canada’s federal, provincial or territorial government, or at the invitation of a municipality or region. The invitation must be presented at the time of application (in many instances, the letter of invitation will originate from a Canadian mission in the U.S.);

- total crew size must not exceed three people, including writers, print, video, film and broadcast journalists, and technicians; and
- the length of stay in Canada must not exceed three weeks.

For Non-North American media crews:

- total crew size must not exceed three persons including writers, print, video, film and broadcast journalists, and technicians;
- length of stay must not exceed six weeks; and
- the final product must be for distribution in and viewing by non-North American markets and audiences.

Media crews not meeting the above conditions must obtain work permits and LMOs. It is the responsibility of the appropriate sponsoring organization representing the employer (airlines, hoteliers, tourism associations, operators, etc.) to obtain the necessary approval for any job offers from the nearest Service Canada (SC) office. Generally, a three-week lead-time is necessary for SC to determine the availability of suitably qualified workers. Sponsoring agencies in Canada are expected to undertake reasonable efforts to identify the availability of suitably qualified Canadians and/or permanent residents, with SC assistance where necessary. This includes contacting the respective union or guild representing the occupations for which the foreign workers are being requested.

5.11. Work without a work permit R186(j)—Public speakers

R186(j) includes both guest speakers for specific events (such as an academic speaker at a university or college function) and commercial speakers or seminar leaders provided the seminar to be given by the foreign speaker entering under this provision does not last longer than five days.

A 'seminar' is defined as a small class at a university, etc. for discussion and research, or a short intensive course of study, or a conference of specialists. Commercial speakers are people who sell tickets or registrations to people who come to hear them speak on a particular topic.

Commercial speakers have a vested interest in the event at which they are speaking. Typically, they rent commercial space in a hotel, advertise, charge admission, deliver the event and then leave Canada. If they are doing this for no more than five days on one trip, they can enter under R186(j). This regulation covers situations where the speaker is speaking to multiple groups, as long as the duration of the speaking events is no more than five days, not counting travel time in the case of multiple engagements.

Not included in R186(j) are commercial speakers who are hired by a Canadian entity to provide training services. In these cases, other entry options must be explored including HRSDC LMOs or the NAFTA Professional category which allows for professionals to provide training services under some circumstances.

5.12. Work without a work permit R186(k)—Convention organizers

R186(k) applies to persons organizing a convention or conference, and to administrative support staff of the organizing committee. The types of event which are covered are association and corporate meetings and congresses, incentive meetings, trade shows or exhibitions and

consumer exhibitions/shows. It should be noted that R186(k) does **not** apply to "hands on" service providers such as those who provide audio-visual (A/V) services, installation and dismantling, show decorating or services, or exhibit builders.

Convention organizers working for a Canadian event cannot receive consideration under R186(k). A Canadian event is one being held by an organization which is located in Canada. The organization must be actively doing business in Canada. A Canadian event may be conducted by a branch or a subsidiary of a foreign based organization.

Note: Persons/delegates attending a conference or meeting are exempt from the requirement for a work permit pursuant to R186(a).

See Appendix H, which includes guidelines for sales and other jobs related to conventions.

5.13. Work without a work permit R186(l)—Clergy

R186(l) applies to persons whose employment will consist mainly of preaching of doctrine, presiding at liturgical functions or providing spiritual counselling, either as an ordained minister, a lay person, or a member of a religious order.

See Section 5.39, Charitable and religious work R205(d), C50

Persons seeking entry under the authority of R186(l) should be able to provide documentation to support their request for entry that addresses:

- the genuineness of the offer of employment of the religious denomination that seeks to employ them, and
- their ability to minister to a congregation under the auspices of that religious denomination.

In exceptional cases, officers may require more information to assess the genuineness of the job offer. Any of the following information may be of assistance:

- Certificate of Incorporation in the province or territory of destination;
- proof of registration as a charity or non-profit organization with Canada Revenue Agency (CRA) under the *Income Tax Act*;
- a statement from the religious organization showing:
    - date and place of founding of the religious organization;
    - length of time in continuous operation in the province or territory of destination;
    - description of the structure of the organization, including names and addresses of officers in the province of destination and any affiliation with a larger religious group;
    - the size of the adult congregation;
    - number of clergy employed;
    - address or the regular meeting place of the congregation;
    - scheduled days and hours of worship.
- copies of relevant sections of the Constitution and by-laws of the religious organization that provide for the ordination, appointment and dismissal of ministers or clergy;
- financial statements for the past fiscal year;
- copy of residential lease if a residence is not supplied for the foreign national;
- proof of ordination or appointment of the foreign national;
- letter of authorization from the governing official of the denomination that includes:
    - the current status of the foreign national with the denomination;
    - recognition of the foreign national's entitlement to minister to the denomination's congregation;
    - name and mailing address of church or congregation to be served;
    - arrangements for remuneration or care of the foreign national;
    - description of exact duties and hours to be worked.

Most religions will be registered as charities or non profit organizations under the *Income Tax Act* and also under provincial or territorial laws.

Processing work permit applications from religious workers (that is clergy, ministers, priests)

At missions or POE
If a foreign national who is normally authorized to work under R186(l) applies to a mission or a POE for a work permit, the application must be considered under R200(1).

In the case of religious workers, who **are not** described in R200(1)(c)(i) and (ii), the work permit application **must** be accompanied by an LMO. There is no exemption from the LMO requirement in these cases. The LMO exemption R205(a) (Canadian interests **C10**) does not apply in these cases. Please consult section 5.29 for more details on the use of R205(a).

The exemption described in R205(d) **C50**, applies to charitable or religious workers who are carrying out duties for a Canadian religious or charitable organization. **Therefore, it does not apply to religious workers who are entering to preach doctrine or minister to a congregation**. See Section 5.38 for details.

If an application for a work permit is submitted without an LMO, officers at missions or POEs should refuse the application; and if applicable, a temporary resident visa (at missions) or a visitor record (at POE), may be issued. Applicants who are refused a work permit overseas or at a POE should be informed that they may work in Canada without a work permit under R186(l), and that, if they still want a work permit, they can apply for a work permit under R199(b) after they enter Canada and once they have obtained an LMO.

At CPC Vegreville
Religious workers who are in Canada and who were initially authorized to preach doctrine or minister to a congregation pursuant to R186(l) may apply for work permits to CPC-V under R199(b) providing that they have first obtained an LMO. **If the applicant does not have an LMO, CPC-V should not issue a work permit.**

5.14. Work without a work permit R186(m)—Judges and referees

R186(m) applies to judges, referees and similar officials involved in international sporting events, generally organized by an international amateur sporting association and hosted by a Canadian organization. Events may include international or university games, winter or summer Olympics, etc. Judges or adjudicators of artistic or cultural events such as music and dance festivals are also included, as are judges for animal shows and agricultural competitions.

5.15. Work without a work permit [R186(n)]—Examiners and evaluators

Eminent individuals who direct the studies and review the work done by students that are under their tutelage will, on occasion, enter Canada to review their student's thesis and papers. R186(n) also includes foreign professors and researchers seeking entry to evaluate academic programs or research proposals [including evaluation of proposals from organizations such as the Natural Sciences and Engineering Research Council of Canada (NSERC)].

5.16. Work without a work permit R186(o)—Expert witnesses or investigators

R186(o) applies to experts who are entering to conduct surveys or analyses to be used as evidence, or persons who will be expert witnesses before a regulatory body, tribunal or court of law.

5.17. Work without a work permit R186(p)—Health care students

Foreign students, registered at foreign educational institutions outside Canada, in fields such as medicine, occupational and physical therapy, nursing and medical technology may do their clinical clerkships or short-term practicums in Canada. Written permission from the body that regulates the particular health field is required in order to ensure that Canadian health care students are placed for clinical practice first. The primary purpose of the practicum must be to acquire training; therefore these positions will often be unpaid and should not be of more than four months' duration.

Foreign students in residency, extern or fellowship positions in Canadian clinical settings are not included in this exemption.

Note: A medical extern is a doctor or medical student who is partaking in a clinical learning opportunity generally known as Externship. Externships are generally offered by educational institutions to give students short practical experiences in their field of study. In medecine it generally refers to a visiting physician who is not part of the regular staff. Typically externs:

- Have some extent of contact with patients
- Perform some procedures
- Usually cannot write formal orders
- Do not receive an academic credit for the externship

Further to consultation with provincial Colleges of Physicians and Surgeons, requirements for medical students destined to specific provinces are:

Province	**Letter from College of Physicians & Surgeons required**	**Note**
Alberta	No	Acceptance from university in Alberta sufficient
British Columbia	No	Acceptance from university in B.C. sufficient
Ontario	No	Does not wish to be involved

For medical students destined to Ontario: The College of Physicians and Surgeons in Ontario has informed CIC that it does not want to be involved in these cases, and it does not object to foreign health students working in medical teaching institutions in Ontario. This non-involvement can be interpreted as approval from the regulatory body, which will enable visa officers to process the application without written approval for each case. Notes in the Computer-Assisted Immigration Processing System (CAIPS) for approved cases should reflect the position of 'no objection' and the rationale, so when the student is seeking to enter Canada, the POE is aware that the matter of 'approval from a regulatory body' has been explored and no involvement from the regulatory body for this occupation has been interpreted as the required approval (or that university acceptance is sufficient).

For medical students destined to British Columbia: The College of Physicians and Surgeons in British Columbia has advised CIC that the College licenses all/all foreign medical students who arrive under R186(p) for short-term practicums, whether they are at the under-graduate or post-graduate level. The College and the universities have special procedures in place that are strictly adhered to. Acceptance by the university is sufficient proof that the College has given approval.

For medical students destined to Alberta: The College of Physicians and Surgeons of Alberta has advised that it treats undergraduate medical students doing electives in Alberta the same as out of province undergraduates. They must first register with the undergraduate elective office at either the University of Alberta or the University of Calgary, which then provides applicants with all the information the university requires of them and also provides them with the College's undergraduate elective application for registration.

The entire process is handled through the university, which then notifies the College of Physicians and Surgeons to finalize the registration. In essence, proof of acceptance by a university in Alberta (Edmonton or Calgary) is sufficient evidence of approval by the regulatory body, that is, the Alberta College of Physicians and Surgeons."

For medical students destined to other provinces and territories: If the College of Physicians and Surgeons for that province has not provided the student with written approval, the visa office should contact International Region (IR) / Operational Coordination (RIM) for assistance in determining whether the province or territory has elected to be involved in health care student practicums for international students.

Note: Persons entering Canada to perform this type of work are required to pass an immigration medical exam according to R30.(See section 9 of this manual, see also OP 11 section 11, and OP 15 section 5).

5.18. Work without a work permit R186(q)—Civil aviation inspector

R186(q) applies to flight operations inspectors and cabin safety inspectors who enter the country temporarily while inspecting safety procedures on commercial international flights. These inspectors are employed by the recognized aeronautical authority conducting the inspections, and would be in possession of valid documentation and/or identification establishing that they are aviation inspectors carrying out inspection duties.

5.19. Work without a work permit R186(r)—Aviation accident or incident inspector

R186(r) applies to accredited representatives or advisors participating in an aviation accident or incident investigation conducted under the authority of the *Canadian Transportation Accident Investigation and Safety Board Act*. Any country that is requested by the country conducting the investigation to provide information, facilities, or experts is entitled to appoint an accredited representative and one or more advisors to assist the accredited representative in the investigation. The country of the operator, the country of registry and the countries of design and manufacture would normally be represented.

5.20. Work without a work permit R186(s)—Crew

R186(s) applies to crew members working on vehicles of foreign ownership and registry such as truck drivers, bus drivers, shipping and airline personnel, who are engaged primarily in the international transport of cargo and passengers. Their duties must be related to the operation of the means of transportation or the provision of services to passengers.

International Trucking

R186(s) applies to truck drivers who are delivering and/or picking up goods across the U.S. and Canadian border, insofar as they do not pick up and deliver from one location to another within Canada.

Foreign truck drivers involved in international hauling should not generally become involved in the loading and unloading of their cargo when such is being delivered directly to a warehouse in Canada from a U.S. destination or picked up in Canada for direct movement to the United States.

The exception is when drivers who have expertise in the handling of loads such as chemicals, furniture, livestock, etc., are responsible for the loading and unloading of their vehicles. Another exception is in cases where drivers will occasionally assist in the handling of their cargo in a non-warehouse situation (such as movers offloading furniture to a house at the end of an international move), especially when no other assistance is available. These practices and exceptions prevail on both sides of the U.S./Canada border.

Foreign truck drivers who are employed by Canadian trucking companies to pick up goods in Canada for delivery to the United States, and who are operating Canadian owned and registered vehicles, cannot receive consideration under R186(s), since both the company and vehicle are Canadian. Nor can independent foreign truckers working under contract to Canadian trucking companies receive consideration under R186(s), since they are being employed by a Canadian company.

Corporate Aircraft

The following scenario would qualify under R186(s): where an American company executive is travelling aboard the company's aircraft from the U.S. to Toronto for a meeting and stopping over in Montreal to pick up another meeting participant, the aircraft would meet the definition of being "engaged primarily in international transportation". The travel of the additional meeting participant from Montreal can be considered "non-commercial", "non-paying" and incidental to the purpose of the trip of the American executive. The crew member, i.e. the pilot, would not require a work permit.

The key element of this scenario is that the aircraft must be a corporate aircraft, solely owned or leased by the corporation specifically for the transport of company personnel on company business. It may not be a charter aircraft or a commercially available flight. Any passengers carried from point to point in Canada must be incidental to the purpose of the trip. Stopping to pick up friends or family members for shopping, cultural, musical or sports events etc., would not qualify as incidental.

5.21. Work without a work permit R186(t)—Emergency service providers

The intent of R186(t) is to facilitate the admission of persons who come to Canada for the purpose of rendering services in times of emergency. These services should be aimed at preserving life and property. The emergency may be the result of natural disasters such as floods, tornadoes, earthquakes, and fires. It may also be the result of industrial or commercial accidents threatening the environment or it may simply be a medical emergency where admission should be facilitated to preserve life regardless of whether it involves one or more persons.

Agreements, such as the *Agreement between the Government of Canada and the Government of the United States on Co-operation in Comprehensive Civil Emergency Planning and Management* (1986), and the *Insurance Bureau of Canada's Claims Emergency Response Plan* (1982) are aimed at facilitating the admission of persons rendering emergency services to either country. Among such persons there may be doctors or medical teams, as well as appraisers and insurance adjusters.

The Insurance Bureau of Canada has developed an emergency response plan to bring in U.S. insurance adjusters/appraisers to assist in the rapid handling of insurance claims in major emergencies. In the event of large-scale disasters, such a response is critical in augmenting existing Canadian services in order to ensure swift economic recovery and stability.

There may also be times when people seek entry under an agreement with Public Safety Canada. All persons responding to such emergency situations may be admitted as visitors regardless of whether there is an agreement in existence or not.

5.22. Work without a work permit R186(u)—Implied status

R186(u) allows for persons to continue working under the conditions of an expired work permit, as long as they applied for a new work permit before the original work permit expired and have remained in Canada. Once the decision has been made, the client will either have to leave Canada or will continue as a worker who holds a valid work permit.

See also OP11, section 24.

5.23. Application for a work permit on entry R198

Persons who may apply at a POE (provided they are not identified in the 2nd column)	Persons who must apply outside Canada
• All nationals or permanent residents of the U.S., and residents of Greenland and St. Pierre and Miquelon (contiguous territories); • Persons whose work does not require an LMO • Persons whose work requires an LMO, as long as it has been issued before the worker seeks to enter.	• All persons who require a TRV; • All persons who require a medical examination – whether TRV required or visa-exempt – unless valid medical examination results are available at the time of entry; • International youth exchange program participants other than U.S. citizens or permanent residents, unless approved by the responsible visa office (that administers the DFAIT-granted quota) abroad (exemption code C21). (See Section 5.34.); • Seasonal agricultural workers; • Live-in caregivers.

Persons who hold a valid work permit, who wish to change their conditions or renew their work permit should apply inland, pursuant to R199. However, urgent situations do arise where clients need to change employers, or quickly renew a work permit which will soon expire. If a person seeking entry into Canada meets the requirements of R198 and R200, their work permit application should be processed at the POE.

If POE time and resources are an issue, and **not** processing a work permit application would not unduly inconvenience a client or their employer, officers can admit clients on their existing work permit and refer them to the case processing centre in Vegreville.

Persons whose work permits expire while they are out of the country must be facilitated at the POE if they are eligible to apply there pursuant to R198. They must provide the officer at a POE with sufficient documentation to satisfy the officer that the client meets the requirements for the category in which they are applying.

5.24. Application for a work permit after entry R199

Persons who may apply from within Canada
• Holders of work or study permits and their family members; • Persons who don't require a work permit who are applying for secondary employment in Canada as long as they are not business visitors; • Holders of temporary resident permits (TRPs) valid for a minimum of six months and their family members; • Refugee claimants and persons subject to an unenforceable removal order; • In-Canada permanent resident applicants and their family members who are members of the following classes, determined eligible for PR status: live-in-caregiver, spouse or common-law partner, protected persons, H&C; • Persons whose work permits were authorized by a mission abroad, where the permit was not issued at a POE; • Mexican citizens who have been admitted to Canada as temporary residents may apply for a work permit under any NAFTA category. U.S. citizens admitted as temporary residents may apply in Canada under the Professional or intra-company transferee NAFTA categories only. These provisions are in accordance with reciprocal arrangements; • Foreign nationals who have the written permission of DFAIT to work at a foreign mission (embassy, consulate or high commission) in Canada.

5.25. Work permits requiring a Labour Market Opinion (LMO) R203

R203 provides the authority for officers to issue work permits on the basis of an LMO from HRSDC. This Regulation provides broad authority for HRSDC to weigh several factors in assessing the impact on the Canadian labour market. Traditional factors such as wages and working conditions and the availability of Canadians or permanent residents to do the work in question are still factors. But also now included are factors such as whether skills and knowledge transfer would result from confirming the foreign worker and whether the work is likely to create other jobs for the benefit of Canadians or permanent residents.

Also important is the fact that HRSDC can provide an LMO regarding whether the issuance of a work permit to a foreign national will have either a neutral or positive effect. In certain situations, this allows the HRSDC officer to confirm unpaid employment.

For details on the HRSDC LMO process see http://www.hrsdc.gc.ca/en/workplaceskills/foreign_workers/index.shtml.

Through this Web site officers can also see details of specific instructions for film and entertainment, academics, agricultural workers including the Seasonal Agricultural Workers Program (SAWP), the Low-Skill Pilot, the Live-In Caregiver Program (LCP), provincial occupations under pressure lists,and oil sands construction workers in Alberta.

Officers should also be aware that there are several sector councils in key sectors of the economy, including automotive, aviation, biotechnology, child care, environment, mining, petroleum, policing, and steel which HRSDC supports under the Sector Council Program. Information is available at http://www.hrsdc.gc.ca/eng/workplaceskills/sector_councils/index.shtml.

Pilot Project for Hiring Foreign Workers in Occupations that Require Lower Levels of Formal Training
(Includes updates from OB 113)

Background

In July 2002, Human Resources and Skills Development Canada (HRSDC), supported by Citizenship and Immigration Canada (CIC), established the *Pilot Project for Hiring Foreign Workers in Occupations that Require Lower Levels of Formal Training* (previously called the Low skilled pilot or LSP). The process introduced by the pilot project allows employers to obtain an LMO for job offers at skill levels C and D listed in the National Occupational Classification (NOC).

For more background on the LSP as well as transitional provisions introduced in February 2007, see the HRSDC website:
http://www.hrsdc.gc.ca/en/workplaceskills/foreign_workers/lowskill.shtml.

Basic HRSDC requirements for the LSP
HRSDC requires that all applications within the LSP have a contract, signed by both the employer and the employee, which outlines the employer's obligation towards the foreign worker. These obligations are the same for all LSP applications and include: wages, working conditions, roundtrip transportation costs, medical coverage, assistance in finding suitable accommodations, and payment of all costs related to hiring the TFW.

Pilot highlights:
- Employers can apply for an LMO for jobs at skill levels C & D listed in the (NOC), for a maximum duration of up to 24 months.
- Job qualifications include a high school diploma at most, or maximum of 2 years of job-specific training.
- Initially, after 24 months of employment in the LSP, temporary foreign workers were to return to their country of permanent residence for at least 4 months before applying for another work permit under the Low Skill Pilot (i.e. 24 months in, 4 months out). The requirement to return home has since been rescinded.
- Employers pay return air-fare, ensure that affordable and suitable accommodation is available, provide temporary medical insurance coverage for the duration of the employment, register workers with provincial workplace safety insurance plans, sign an employer-employee contract and demonstrate continued efforts to recruit and train Canadian workers.

Assessment of LSP applications
Assessment of an applicant's ability to do the job may be part of the WP assessment as there is less education to prove ability.

WP assessment includes but is not limited to: IRPR 179, IRPR 200, bona fides and dual intent (see OP11, section 5.4).

When assessing applications in the LSP, officers should continue to exercise their judgement in making well-informed decisions.

LSP - Language Requirements

R 200 (3) (a) states that:
> "An officer shall not issue a work permit to a foreign national if there are reasonable grounds to believe that the foreign national is unable to perform the work sought."

This may include the ability to communicate in English or French.

Officers should consider the reading, writing and oral requirements for the position, which includes ensuring the TFW will be aware of any safety requirements in the workplace. The presence of another employee who speaks the same language as the applicant, in addition to English or French, in the workplace is not always an adequate substitute as there is no guarantee they will be with the TFW at all times.

Officers may request proof of language ability via IELTS, TEF or an alternate submission.

Applications from spouses/dependent children
Applicants may wish to have their spouses and dependent children accompany them to Canada.. In these cases, the officer should consider the applications as a single unit, rather than assessing each separate from the others.

The applicant's spouse is not eligible for an open work permit and requires an LMO if applying for a work permit. Also, as temporary residents, any children may be required to pay international student rates to attend school. These costs, as well as the cost of travel to Canada, health coverage and family accommodations, may have to be borne by the applicant since the employer, under the LSP, is obliged to provide these only for the applicant. The onus is on the applicant to demonstrate to the officer that they are capable of meeting these expenses.

Processing considerations
Although the LSP provides lower-skilled workers an opportunity to work temporarily in Canada, it does not afford them any priority in the processing queue. Applications within the LSP should be processed in the same queue as other WP applications and be completed on a "first come, first served" basis.

Coding
Officers are to enter "LSP" as a Special Program code in FOSS or CAIPS on initial work permits and extensions. This will assist immigration officers in Canada when reviewing applications for work permit extensions. It is also important for statistical and policy development purposes.

Exclusions
The Low-Skill Pilot does not apply to the Live-In Caregiver Program (LCP) or the Seasonal Agricultural Worker Program (SAWP).

Additional Reporting
Information collected at the missions on the LSP movement should be forwarded to International Region, to cic-nat-operational-rim-tfw@cic.gc.ca and the appropriate geographic desk, so that an accurate picture of the overall low-skilled movement can be drawn and appropriate adjustments made.

National confirmation letters

HRSDC has provided a national labour market opinion that applies to all foreign workers who have job offers in the described fields. Thus far, a National Confirmation Letter is in force for the following work situation:

Information technology workers

In response to the need of employers to fill critical shortages in the software industry, CIC collaborated with HRSDC, Industry Canada and the Software Human Resource Council (SHRC) on the development of a pilot project to streamline the entry of workers whose skills are in high

demand in the software industry and whose entry into the Canadian labour market would have no negative impact on Canadian job seekers and workers.

To qualify, applicants must be offered a job in one of seven occupations. For information on the job descritions, see http://www.cic.gc.ca/english/work/itw-jobs.asp

- It is acceptable within the IT category for applicants to hold a bachelor's degree in any field. However, a college diploma/certificate must contain a computing element.
- Per diem payment, in addition to the salary offered, is acceptable when considering salary ranges for each of the seven job descriptions.

For additional information, see also the following link http://www.ci.gc.ca/cicexplore/1976archive/english/guides/om-nso/1999/fw/fw99-03.htm.

Note: The National Confirmation Letter for Canada Research Chair Positions has been replaced by R205(c)(i) C30 LMO exemption for all research chair positions at Canadian universities. See Section 5.37.

Cooperation between HRSDC and CIC and Canada Border Services Agency (CBSA)

The temporary foreign worker program is unique in that its delivery relies on the close cooperation of two different departments. The ability to telephone or e-mail is important in smoothing out what can sometimes be a cumbersome approval process, especially for those cases that fall into an apparent 'grey' area. Officers are encouraged to contact HRSDC in cases where, for example, a bit more detail regarding the job offer would assist the decision, and likewise are encouraged to respond to HRSDC queries in a timely manner. Ultimately, closer communication will result in quicker, more efficient service which benefits the clients (Canadian employers and the foreign workers) and the two departments. CIC/CBSA officers are provided with a list of every HRSDC foreign worker officer and their contact information, and likewise HRSDC officers have been provided the contact information for CIC officers.

When an officer receives a work permit application without an LMO, in some cases it may be helpful to consult directly with HRSDC before advising the applicant to have their employer submit an application to them. In all cases where the applicant is advised to have their employer seek an LMO, they should be given a letter, which the employer can then submit along with their application to HRSDC. The referral letter should have the contact information of the immigration or visa officer, so that HRSDC can follow up, if needed.

There may be many situations where communication (separate from, or in addition to, issuance of an LMO) between HRSDC and CIC/CBSA can facilitate the decision-making process and improve client service. Some common situations where communication is recommended are listed below:

- Officers intend to recommend to the worker that their employer seek an LMO in cases where the work does not meet traditional criteria (i.e., where the work is unpaid, or there are other economic considerations besides the labour market). A discussion of whether it is better to confirm or apply C10 (see Section 5.29) may be useful in cases where facilitation is warranted.

- The officer would like some advice on the local labour market to assist them in making a decision on a self-employed temporary foreign worker. (See Section 5.30, C11.)

- The officer is considering applying C10 or C50 (see Section 5.40) for work which will provide a social or cultural benefit, or which may be charitable, and local labour market information will assist them in making a decision.

HRSDC officers may in turn contact CIC (the relevant visa office, POE or inland office) if they believe an LMO exemption would apply, and wish to verify this before sending the employer (and the foreign worker) directly to CIC. Sending the client fruitlessly back and forth between departments should be avoided as much as possible.

A record of communications with HRSDC should be noted in the client's electronic file.

For information on how to determine work permit expiry dates relative to the dates found on an LMO, see Section 6.

Officers should process work permit applications in accordance with the regular requirements for temporary foreign workers. (See procedures in section 8 below.)

5.26. Work permits exempt from an LMO (Exemption codes)

Updates from OB 145 included.

R204 to R208 provide the regulatory authority to issue a work permit to a worker who does not have an LMO. The LMO Exemption Codes are listed in the following table.

LMO Exemption Codes

Regulation	LMO Exemption Code	X-ref to 1978 Regulations Code
R204 International agreements		
a) Canada-International		n/a
Non-Trade	T11	
Trader (FTA)	T21	B21
Investor (FTA)	T22	B22
Professional/Technician (FTA)	T23	B23
Intra-company transferee (FTA)	T24	B24
GATS Professional	T33	B25
b) Provincial-International	T12	n/a
c) Canada-Provincial/Territorial	T13	n/a
R205 Canadian interests		
a) Significant benefit	C10	E19
i) Entrepreneurs	C11	E01, E03, E05
ii) Intra-company transferees (including GATS)	C12	E15, B26
iii) Emergency repairs	C13	A09
b) Reciprocal employment	C20	E99
i) Youth Exchange Programs	C21	E35
ii) Exchange Professors, Visiting Lecturers	C22	E40
c) Designated by Minister		D10
i) Research, educational or training programs	C30	D20, D30, D35
ii) Competitiveness and public policy		
A. Spouses of skilled workers	C41	E14
B. Spouses of students	C42	E07
C. Post-grad employment	C43	E08
D. Post-doctoral fellows and award	C44	E45

recipients		
E. Off-campus employment (Pilot)	C25	n/a
d) Charitable or religious work	C50	E20, E25
R206 Self-support		
a) Refugee claimants	S61	A02
b) Persons under an unenforceable removal order	S62	A01, A04, A05, A06, A07, A10, A11, A13
R207 (PR) Applicants in Canada		
a) Live-in-caregiver class	A70	A01
b) Spouse or common-law partner class	A70	A01
c) Protected persons under A95(2)	A70	A03
d) Section A25 exemption	A70	A01
e) Family members of the above	A70	(same code as principal applicant)
R208 Humanitarian reasons		
a) Destitute students	H81	C05
b) Holders of a TR Permit valid for minimum of six months	H82	F01, F02, F03, E02

5.27. Agreements – R204

Updates from OB 145 included.

Summary: work permits are generally required, but exempt from an LMO. (See section 5.26.)

Canada concludes agreements that involve the movement of foreign personnel to Canada. Admission of foreign workers under these agreements benefits the Canadian economy and serves to meet other objectives aimed at foreign policy, culture, trade and commerce. Officers should ensure that the terms of the agreements are respected and that only those types of workers stipulated in the agreements gain access to Canada. Persons who are entering just for meetings pursuant to these agreements may be admitted as business visitors.

Agreements not listed

Instances will occur where workers will be coming forward pursuant to a valid agreement that may not be on the list. In such cases, admission should be facilitated if workers can satisfy the officer that there is an agreement that covers their admission. Not included under these agreements are diplomatic agreements with United Nations Organizations, such as the International Civil Aviation Organization (ICAO). Persons entering under diplomatic agreements may be facilitated under R186(b).
(See Appendix C.)

International Free Trade Agreements – R204(a)

Persons admitted under the North American Free Trade Agreement (NAFTA) or other FTAs parallel to the NAFTA, are admitted under exemption codes T21 for Traders, T22 for Investors, T23 for Professionals and T24 for intra-company transferees.

Persons admitted under the General Agreement on Trade in Services (GATS) are admitted under exemption codes T33 for Professionals. GATS intra-company transferees are admitted under the general provision R205, C12.

Canada-International Non-Trade Agreements – R204(a) – T11

Agreement	Description
Airline Personnel	Numerous bilateral air transport agreements exist between Canada and other countries. A separate arrangement is in place dealing with El Al Airlines security guards on aircraft and at the airport. Procedures in this respect are discussed in Section 13.1, Airline Personnel.
Airline Telecommunication & Information Services (SITA)	This organization, located in Montreal, has a mandate of developing the fields of transmission and processing all categories of information necessary for airline operation and to study any related problems to promote air transportation safety and dispatch reliability in all countries. They cooperate with IATA, ICAO and other governmental and non-governmental bodies in these fields. Given the benefits of having the North American and Caribbean headquarters of SITA in Canada, CIC has undertaken to facilitate such foreign workers as SITA deems necessary to engage
Artists Residencies Programme between Canada/US/ Mexico	Canada has entered into an agreement with the U.S. and Mexico for an exchange of artists. Selected by an international jury, a maximum of ten artists from the United States and ten artists from Mexico will come to Canada annually as guests of Canadian institutions for up to two months. Applicants will be in possession of a letter from the National Endowment for the Arts or from the DFAIT. If clarification is required, officers should contact the Arts and Letters Division, DFAIT, at (613)992-5726.

Canada-Bermuda MOU, Professional Trainees	Temporary employment in Canada under the terms set out in the Memorandum of Understanding between Canada and Bermuda. Procedures are as follows.
	People seeking to engage in employment in Canada pursuant to this MOU must:
	• possess Bermuda status and normally reside in that country;
	• be graduates of a professional course of a recognized Canadian university or other appropriate Canadian post-secondary institution;
	• have completed their academic training, but not yet have taken up their profession in Bermuda; and
	• be selected by a designate of the Bermudian Government to engage in employment meeting the following requirements:
	  • the functions and duties of the position must provide practical experience solely in the profession in which that worker has recently completed academic training and in which that worker will engage upon returning to Bermuda;
	  • the worker must not engage in employment in Canada for a period in excess of two years unless otherwise mutually agreed upon by Canadian parties concerned on a case by case basis.
	Documentation required:
	• a written employment offer;
	• evidence from the appropriate provincial or Canadian professional licensing or regulatory body indicating that it has no objection to the

	applicant exercising their profession in Canada; • a statement that the applicant will return to Bermuda to pursue their profession upon completion of the term of employment.
Churchill Research Range	Agreement between Canada and the U.S. on the joint use, operation and maintenance of the Churchill Research Range.
Cooperative Waterfowl Survey & Banding Program	The program is conducted by the Canadian Wildlife Service and the United States Fish and Wildlife Service. Program participants include biologists, research personnel and airline pilots who generally come as teams of two or more to participate in ecological surveys, often in isolated areas.
Public Safety Canada	Emergency service providers are facilitated under R186(t), (see Section 5.21). However, from time to time, there are agreements in place with Public Safety Canada for foreign workers to come to Canada for the purpose of incidents which are not of an emergency nature. The person will be in possession of a letter referring to an agreement. If clarification is required, officers should contact the office of Public Safety Canada in Ottawa at (613) 991-7077.
Film Co- Production	All temporary workers entering Canada to take employment under the terms of a film co-production agreement between Canada and any foreign country. (See Appendix A.)
Fulbright Program between Canada and the U.S.	Foundation for Educational Exchange between Canada and the United States of America; this organization facilitates academic (both work and study) exchanges for participants. Work permits are fee exempt [R299(2)(h)].
International Air Transport Association (IATA)	Headquartered in Montreal, IATA is an association of over 220 of the world's airlines. The Government of Canada completed a Memorandum of Understanding regarding IATA operations in Canada in 1987. Included in the MOU is a commitment to facilitate issuance of work permits made to officers, employees or specialists contracted to IATA.
International Pacific Halibut Commission	Sea and port samplers employed to conduct research at various ports in British Columbia during the halibut season. Their entry is pursuant to the Pacific Halibut Fishery Regulations, a Canada/U.S. Agreement.
Jamaica: Seasonal Agricultural Program, Liaison Officers	Canada has a Memorandum of Understanding with the Jamaican Government concerning the Commonwealth Caribbean Seasonal Agricultural Workers Program (signed in 1994). The agricultural workers themselves must have LMOs, however, there is provision in the Operational Guidelines of the agreement for the Jamaican government to appoint one or more agents to Canada to ensure the smooth functioning of the program. Liaison Officers appointed to work at the Jamaican Liaison Service office in Toronto would qualify under this exemption.
Malaysia, Professional Accounting Trainees	Malaysia recognizes the professional standards of the Canadian Institute of Chartered Accountants and wishes to ensure that Malaysian students acquire the educational and technical knowledge to meet these standards by articling upon graduating from Canadian institutions of higher learning in the field of business programs related to accounting. Through a Memorandum of Understanding, the Government of Canada has agreed that Malaysian nationals who have completed the appropriate academic professional training in Canada from a recognized Canadian university or post-secondary institution may take employment for the purpose of gaining practical experience before assuming their profession as chartered accountants in Malaysia. To engage in employment pursuant to the Memorandum of Understanding, the worker must:

	• be a Malaysian national and normally reside in Malaysia; • be a graduate of a professional course of a recognized Canadian university or other appropriate Canadian post-secondary institution in the field of business programs related to accounting; • have completed their academic training, but not yet taken up their profession in Malaysia; and • be certified by a designate of the Malaysian Government to engage in employment meeting the requirements of employment as outlined below. To be considered eligible, the employment must: • provide practical experience solely in the profession of chartered accountant, a profession in which the worker will engage upon returning to Malaysia; • be pursuant to the MOU only for the period necessary to be received as a chartered accountant, which shall not exceed three years unless otherwise mutually agreed upon by the parties concerned (to be assessed on a case by case basis). Listed below are the documents that applicants must submit: • a written employment offer which can be obtained through the efforts of the worker or with the assistance of the Government of Malaysia; • evidence that the appropriate provincial or Canadian professional licensing or regulatory body governing chartered accountants has no objection to the worker articling in Canada; • a statement from the applicant that they intend to return to Malaysia to pursue their profession upon completion of employment; • a statement from (a representative of) the Malaysian Government certifying participation in the program. The documentation required to obtain a work permit is presented to the visa office unless the worker is already in Canada and is able to obtain a work permit in Canada.
North Atlantic Treaty Organization (NATO)	**Note:** Persons entering Canada to take employment at facilities located at Foley Lake, Nova Scotia or Carp, Ontario. Their stay in Canada may be for many years and consequently long-term work permits may be issued pursuant to R204 (see Appendix F). **Note:** NATO nations are covered by the Status of Forces Agreement (taken from the *Visiting Forces Act*). Military personnel coming to Canada under NATO, including the civilian component, are exempt from a work permit pursuant to R186(d).
North Pacific Marine Science Organization (PICES)	This is an intergovernmental scientific body whose members encompass Canada, U.S.A, Japan, China, the Russian Federation and the Republic of Korea. The organization promotes and co-ordinates marine scientific research, and as such, brings in scientists under Intern or Visiting Scientist programs. The Secretariat of PICES is housed at the Institute of Ocean Sciences of Fisheries and Oceans, in Sidney, British Colombia.
Organization for Economic Co-operation &	The Organization for Economic Co-operation and Development (OECD). Exchanges are arranged in Canada through the Public Service Commission. Individuals are provided with copies of the International Assignment

Development (OECD)	Agreement as it relates to their assignments and should be in possession of their agreement when seeking entry. A work permit may be issued for the length of time specified in the agreement. Alternatively, if the individual qualifies under R186(e), they may be admitted as a visitor.
Pacific Salmon Commission (PSC)	The PSC is an international scientific body created to implement the *Pacific Salmon Treaty*, signed in 1985 between the governments of Canada and the United States. As with the Halibut Commission, samplers and scientists should be allowed an LMO-exempt entry.
Roosevelt Campobello International Park	Persons entering Canada from the United States to take employment under the terms of the Agreement between the Government of Canada and the Government of the United States relating to the establishment of the Roosevelt Campobello International Park. Supporting documentation: an offer of employment from the Park's Commission. Fee exempt.
Scientific and Technical Cooperation Agreement between Canada and Germany	In 1971, Canada and Germany entered an agreement to facilitate and encourage scientific and technological cooperation and exchanges of information and personnel between the agencies, organizations and enterprises in the public and private sectors of the two countries. Fields of cooperation may vary from year to year.

Canada-International Free Trade Agreements – R204(a)

North American Free Trade Agreement (NAFTA)	See **Appendix G** T21, T22, T23, T24
Canada-Chile FTA Canada-Peru FTA	See **Appendix B** T21, T22, T23, T24
General Agreement on Trade in Services (GATS)	See **Appendix D** T33 (and C12 under general provisions as per R186(a) and R205(a))

Provincial-International Agreements – R204(b) –T12

There are currently no agreements that influence the issuance of work permits.

Canada-Provincial Agreements – R204(c) – T13 (Note: T10 is no longer used as of August 14th, 2009)

http://www.cic.gc.ca/english/department/laws-policy/agreements/index.asp

Includes updates from OB 145.

1. Temporary Foreign Worker Provincially Selected (TFW-PS)

Under the terms of Temporary Foreign Worker Annexes that have been negotiated with certain provinces/territories, provinces have the authority to have the requirement for a labour market opinion waived for work permit applicants named in a written request from the province or territory. This authority is based on section 204(c) of the IRPR. Provisions respecting this

authority might vary slightly from province to province and for greater certainty the wording in the appropriate annex should be referred to.

To date, Ontario and Alberta have such agreements in effect, they can be seen at the following links:

Canada-Ontario Immigration Agreement - TFW Annex 2008 -
http://www.cic.gc.ca/english/department/laws-policy/agreements/ontario/index-ont.asp

Agreement for Canada-Alberta Cooperation on Immigration -
http://www.cic.gc.ca/english/department/laws-policy/agreements/alberta/index-alberta.asp

Role of the provinces
In exercising its R204(c) authority, a province will provide the visa office with a letter containing the necessary details such as the name(s) and birthdate(s) of the individual(s) selected for the specific job, information about the employer and place of work, the duration of the job, and how it fits in with the employer's broader operations. A copy of this letter will be attached to each TFW's application and upon receipt – whether at a visa office or, for visa-exempt workers, at a port of entry (POE) – the application shall be assessed for each individual as per usual procedures. TFW-PS applicants do not require a nomination certificate.

Work Permit Instructions
TFW-PS applications shall be processed like other TFW work permit applications, on a first come first serve basis.

REMARKS: TFW-PS should be entered in the "Remarks" field to facilitate differentiating between this and the PNP provincial selection type.

EXTENSIONS: Maximum two-year extensions (or duration stated in the letter) may be issued provided the province has supplied the TFW with another letter affirming that the worker still meets the criteria for recommendation. Although no maximum was specified in the Agreements, a general guideline of three 2-year extensions for each TFW-PS can be used.

2. Temporary Foreign Worker Nominated by a Province (TFW-PNP)

It has been agreed with the provinces that have entered into provincial nominee agreements that a person who has been nominated by a province for permanent residence and has a job offer from an employer based in that province may be issued a work permit without requiring an LMO. In order for this provision to be applied, the application for the work permit must include a letter from the provincial government that confirms:

- that the foreign national has been nominated for permanent residence by the province; and
- that the nominated individual is urgently required by the provincial-based employer who has made the foreign national a job offer.

The duration of the work permit should be equivalent to the duration of the job offer.

"TFW-PNP" should be entered in the "Remarks" field to facilitate differentiating between the PNP and the TFW-PS provincial selection types.

Note: If there are any obvious potential medical or security concerns, these should be dealt with before any work permit is issued.

Note: It is not necessary that the application for permanent residence of the foreign national has been received by CIC for the work permit to be issued. The letter from the province is sufficient to trigger this LMO exemption.

As of July 15, 2004, language to this effect has been incorporated into the agreements of Manitoba and British Columbia. Similar language will be incorporated in all other provincial nominee agreements as they come up for renewal. For those provinces where the agreements have been amended, the legislative authority for the LMO exemption is R204(c). For all other provinces, the exemption should be immediately applied as though the agreement had already been amended. In those cases, however, the legislative authority for the exemption is R205(a).

Provincial Programs and Pilots related to TFW Annexes – R204(a) – T13

Ontario	Pilot Project for Working Age Dependent Children of Workers Destined to Ontario – OB 123 – July 1st, 2009 to June 30, 2010*. Special Program Code – 'WDP'
Alberta	Pilot Project for Working Age Dependent Children of Workers Destined to Alberta – OB 122 - July 1st, 2009 to June 30, 2010*. Special Program Code – 'WDP'
	Alberta Pilot Project for Spouses and Common-Law Partners of Long-Haul Truck Drivers – OB 146 – August 17th, 2009 to August 16th, 2010*. Special Program Code – 'LTD'

*These dates refer only to the period in which qualifying work permits must be received, not to the duration of the work permits. The terms of the pilot will apply only to qualifying foreign nationals as described in the Operational Bulletins. All relevant work permits must be coded with exemption code T13 and with the appropriate Special Program code in order to support an effective evaluation of the pilot.

5.28. Canadian interests: Significant benefit—Overview R205(a)

Guidelines for general admission under this category are provided in Section 5.29 (exemption code C10). Guidelines are also provided for the admission of three other categories of worker, which are considered to be beneficial and not requiring of an LMO. These are Entrepreneurs (C11), intra-company transferees (C12), and persons providing emergency repairs (C13).

For more information, see:

- section 5.29, Canadian interests: Significant benefit—General guidelines R205(a), C10
- section 5.30, Canadian interests: Significant benefit—Entrepreneurs/self-employed candidates seeking to operate a business R205(a), C11
- section 5.31, Canadian interests: Significant benefit—intra-company transferees R205(a), C12
- section 5.32, Canadian interests: Significant benefit—Emergency repair personnel R205(a), C13

5.29. Canadian interests: Significant benefit—General guidelines R205(a), C10

In considering LMO exemptions before issuing a work permit, officers should keep in mind the general principle: Authorizing a foreign national to work in Canada has an impact on the Canadian labour market and economy. And, generally speaking, officers should be reluctant to issue a work permit without the assurance from HRSDC that the impact on Canada's labour market is likely to be neutral or positive. Most exemptions from the need for a positive HRSDC labour market opinion are very specific and clearly defined such as the policy for spouses of some foreign workers and students, or the Regulations regarding issuance of work permits for refugee claimants, or regarding international agreements.

However, circumstances sometimes present officers with situations where an LMO is not available, and a specific exemption is not applicable, but the balance of practical considerations argues for the issuance of a work permit in a time frame shorter than would be necessary to obtain the HRSDC opinion. R205(a) is intended to provide an officer with the flexibility to respond in these situations. It is imperative that this authority not be used for the sake of convenience, nor in any other manner that would undermine or try to circumvent the importance of the LMO in the work permit process. It is rather intended to address those situations where the social, cultural or economic benefits to Canada of issuing the work permit are so clear and compelling that the importance of the LMO can be overcome.

Officers should look at the social/cultural benefit of admitting persons of international renown, examining whether a person's presence in Canada is crucial to a high-profile event, and whether circumstances have created urgency to the person's entry.

For requests for work permits based on significant economic benefit, where entry into the labour market is concerned, all practical efforts to obtain HRSDC's opinion should be made before C10 is applied. Foreign nationals submitting an application for consideration under C10 should provide documentation supporting their claim of providing an important or notable contribution to the Canadian economy.

Assessing significant social or cultural benefit

The foreign national's proposed benefit must be significant, meaning it must be important or notable. Officers should rely heavily on the testimony of credible, trustworthy, and distinguished experts in the foreign national's field and any objective evidence. The foreign national's past record is a good indicator of their level of achievement. Thus, the foreign national's past track record in their field should be strong and distinguished. It would be helpful to show that the foreign national can immediately be recognized as a leader in their field.

Objective measures for "significant social or cultural benefit"

- an official academic record showing that the foreign national has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of their ability;
- evidence from current or former employers showing that the foreign national has significant full time experience in the occupation for which he or she is sought; significant in this context can be taken to mean ten or more years experience;
- has been the recipient of national or international awards or patent;
- evidence of membership in organizations requiring excellence of its members;
- having been the judge of the work of others;
- evidence of recognition for achievements and significant contributions to the field by peers, governmental organizations, or professional or business associations;
- evidence of scientific or scholarly contributions to the field by the foreign national;

- publications authored by the foreign national in academic or industry publications;
- leading role of the foreign national in an organization with a distinguished reputation.

As before, a defensible rationale for the use of R205(a), C10 should be entered in the CAIPS notes or on the FOSS remarks screen. This is important both for assisting the Case Processing Centre - Vegreville (CPC-V) in dealing with requests for renewals, and for audit purposes.

5.30. Canadian interests: Significant benefit—Entrepreneurs/self-employed candidates seeking to operate a business R205(a), C11

Summary of criteria:

- All workers in this category must meet the requirements of R205(a). The appropriate exemption code is C11.

Applicants who have, or may have, a dual intent to seek status as a worker and then eventually as a permanent resident, must satisfy the officer that they have the ability and willingness to leave Canada at the end of the temporary period authorized under R183.

Permanent resident applicants

If a permanent resident applicant has met the definition of “entrepreneur” or “self-employed” (R97 to R101) and has been selected, they may be issued a work permit if there are compelling and urgent reasons to admit the person before processing is complete. They must demonstrate that their admission to Canada to begin establishing or operating their business would generate significant economic, social or cultural benefits or opportunities for Canadian citizens or permanent residents pursuant to R205(a). It should be noted that any ‘early admission’ entrepreneurs must also satisfy the officer that they meet the requirements of A22(2), that they ‘will leave Canada by the end of the period authorized for their stay’, if their permanent residence application is ultimately refused. A work permit should not be granted to remedy concerns relating to processing times, particularly if serious questions such as source of funds remain outstanding.

Temporary resident applicants

Where a person has applied for a work permit to operate a business or be self-employed simultaneously with submitting an application for permanent residence, they must also meet the requirements of **R205(a)**. It is expected that it would be a rare applicant who could satisfy an officer that their entry into Canada would provide a significant benefit before their eligibility for permanent residence has been assessed.

Similarly, for applicants who do not intend to reside permanently in Canada, R205(a) may be difficult to satisfy if the profits and economic spin-offs generated by the enterprise do not remain in the Canadian economy. However, there will be situations where the business or the intended period of work is genuinely temporary, i.e., the applicant intends to leave Canada after starting a business, and either close the business (it being seasonal), or hire a Canadian to operate it. Significant benefit must still be demonstrated. However, benefit to a self-employed worker's Canadian clients may also be considered in this case, particularly if the worker is providing a unique service. If the applicant intends to start or buy a business where their own temporary status may be indefinite (i.e., permanent), officers should encourage the person to apply for permanent residence. There may also be self-employed workers who can demonstrate significant social or cultural benefits who intend to work in Canada for only a temporary period.

Note: Special considerations apply when the application for a work permit comes from a foreign national who is being considered by a provincial government for nomination as a permanent resident. Many provinces have indicated a growing interest in having foreign nationals who have been identified as potential provincial nominees based on their intention to undertake business activities in their province

issued a work permit to undertake entrepreneurial activity **prior to** the actual nomination of the foreign national. These provinces understandably wish to see the potential nominee begin the implementation of their business plan as a demonstration of genuineness of intention, before actually nominating the person.

Special consideration is also applicable to entrepreneurs and self-employed individuals destined to Quebec, where a Certificate of Selection for Quebec (CSQ) has been issued, but the foreign national is not yet a permanent resident. While Quebec does not have a Provincial Nominee Program, special consideration is applicable on the basis of the Canada-Quebec Accord.

The indication by a province that there would be benefit to that province (and therefore to Canada) by permitting the entry of the foreign national to carry out business activity is sufficient to satisfy R205(a). Just as an HRSDC opinion assures CIC officers that there will likely not be any negative impacts on the Canadian labour market, an opinion from a province assures CIC that there is a likely significant benefit in issuing the work permit as requested. In order for this provision to be applied, the application for the work permit must include a letter from the provincial government that confirms:

- that the foreign national is being considered for nomination for permanent residency by the province based on a stated intention to conduct business activity in that province;
- that the provincial government is of the opinion that the planned business activity will be of significant benefit to the province; and
- a CSQ has been issued for Quebec cases.

The work permit is to be issued for a two-year period, and is non-renewable. It is expected that the province will decide during this two-year period whether or not to nominate the person and, if this is done, any necessary extension of the work permit can be supported by the fact of nomination (see Section 5.27).

Note: It is not necessary that the application for permanent residence of the foreign national be received by CIC for the work permit to be issued. The letter from the province is sufficient to trigger this LMO exemption.

Long-term self-employed applicants

Persons who have repeatedly been issued work permits over several years in the self-employed category should, in addition to satisfying the indicators of general economic stimulus, be able to provide evidence of the following:

1. registration of their business as a legal entity in Canada;
2. demonstration that the profits of the business remain predominantly in Canada or proof that other significant benefits have accrued to Canada;
3. proof that all appropriate federal, provincial and local tax returns have been filed.

Factors in considering 'significant benefit'

In cases where significant benefit is being argued, officers may wish to consult organizations in Canada who can provide an opinion. For example, if an applicant wishes to be self-employed in the tourism industry, officers should contact the provincial tourism authority to determine whether the activity would be beneficial or actually impinge on Canadian service providers. Other sources of information and advice include local Canadian Chambers of Commerce, and HRSDC (who, while unable to formally confirm self-employment, should have knowledge of the local labour market situation). Examples of indicators of 'significant benefit' include: general economic stimulus (such as job creation, development in a regional or remote setting or expansion of export markets for Canadian products and services) and advancement of Canadian industry (such as

technological development, product or service innovation or differentiation, or opportunities for improving the skills of Canadians).

Sole or partial ownership

Irrespective of permanent residence requirements, ideally, the issuance of work permits for entrepreneurs should only be considered when the applicant controls at least 50% of the business in question. However, there may be cases where a person owns a slightly smaller stake and will be coming to work on the business. HRSDC cannot offer a formal LMO in cases where there is no job offer or wages, but they can provide informal assistance, verifying whether the business is an existing concern in Canada, whether there are existing employees, whether there are similar businesses in existence, etc.

Questions to consider in determining whether R205(a) is met (whatever percentage of the business in Canada is owned) are similar to the factors laid out in R203:

- Is the work likely to create a viable business that will benefit Canadian workers or provide economic stimulus?

- Does this worker have a particular background or skills that will improve the viability of the business?

Just because a person owns shares in a business does NOT mean that they will meet the requirements of R205(a). A work permit may only be issued if significant benefit would result from their work in Canada.

If there are multiple owners, generally only one owner would be eligible for a work permit pursuant to R205(a), unless exceptional circumstances can be demonstrated. Any further work permit applicants require an LMO. While CIC does not want to discourage investment in Canada, these guidelines are intended to prevent transfer of minority shares solely for the purpose of obtaining a work permit.

5.31. Canadian Interests: Significant benefit—intra-company transferees R205(a), C12

A) General

The intra-company category was created to permit international companies to temporarily transfer qualified employees to Canada for the purpose of improving management effectiveness, expanding Canadian exports, and enhancing the competitiveness of Canadian entities in overseas markets.

The entry of intra-company transferees is guided by the IRPA regulations and the general provisions of this section, and are supplemented by provisions contained in international trade agreements for citizens of signatory countries. Harmonization of IRPA and NAFTA intra-company transferee provisions means that there are now no differences in terms of entry requirements and work permit durations.

- qualified intra-company transferees require work permits and are LMO exempt under R205(a), C12, as they provide significant economic benefit to Canada through the transfer of their expertise to Canadian businesses. This applies to foreign nationals from any country.
- Regulation 204(a) provides LMO exemption code T24 for qualified intra-company transferees who are citizens of a country that has signed an international agreement with Canada, namely NAFTA (and similar FTAs) and the GATS, and supplements the IRPA general provisions.

General requirements
Intra-company transferees may apply for work permits under the general provision if they:

- are seeking entry to work in a *parent*, *subsidiary*, *branch*, or *affiliate* of a multi-national company;
- will be undertaking employment at a *legitimate* and *continuing* establishment of that company (where 18-24 months can be used as a reasonable minimum guideline);
- are taking a position in a *Executive, Senior Managerial, or Specialized Knowledge* capacity;
- have been employed by the company outside Canada in a similar full-time position (not accumulated part-time) for one year in the previous three years prior to coming to Canada;
- are coming to Canada for a *temporary* period only;
- comply with all immigration requirements for temporary entry.

B) Qualifying relationship between the Canadian and foreign employer
The Canadian and foreign enterprises must be legal entities that have a *parent, subsidiary, branch or affiliate* business relationship. Both the Canadian and foreign companies must be, or will be **doing business.**

Doing business means regularly, systematically, and continuously providing goods and/or services by a parent, branch, subsidiary, or affiliate in Canada and the foreign country, as the case may be. It does not include the mere presence of an agent or office in Canada. For instance, a company with no employees which exists in name only and is established for the sole purpose of facilitating the entry of intra-company transferees would not qualify. (See Appendix G for an explanation of terminology.) Evidence of the fact that a company is actively doing business such as annual reports (for public companies), articles of incorporation, profit/loss statements, partnership agreements, licence to do business, business tax returns and registration with Canada Customs and Revenue Agency as an employer, may be useful. Both the Canadian and the foreign branches of the company must be doing business for the duration of the intended stay in Canada of the intra-company transferee. The foreign national employee must be able to transfer back to the foreign company at the end of their assignment in Canada.

Business enterprise means any entity constituted or organized under applicable law, and either privately-owned or owned by the government, including any corporation, trust, partnership, sole proprietorship, joint venture or other associations.

Also included are religious, charitable, service, or other non-profit organizations which must demonstrate that it is a firm, corporation, or other legal entity that has a parent, subsidiary, branch or affiliate relationship. Therefore, there is no difference in this regard to commercial entities. Both the Canadian and foreign entities must be legal entities. For intra-company transferee classification, ownership and control are the factors which establish a qualifying parent, branch, subsidiary, or affiliate relationship. Ownership means the right of possession with full power and authority to control. Control means the right and authority to direct management and operations of the entity.

Definitions of **enterprise, parent** and **subsidiary, branch and affiliate** are the same as in NAFTA (See Appendix G, 4.4).

For guidelines on mergers and acquisitions, including sample employer information to assist officers in cases of change of employer's name, see Appendix I.

The focus for intra-company transferees in the event of a merger or acquisition is establishing that a qualifying relationship remains, even though there have been changes in ownership. The onus is on the applicant to provide evidence that this is the case.

A **qualifying relationship** remains if the Canadian and foreign entities continue to meet the definition of parent, subsidiary, affiliated or branch companies. If the entities no longer meet the requirements for these relationships, then any foreign intra-company transferee currently working for the Canadian entity would not qualify to continue working for the new entity.

If the qualifying relationship remains, foreign intra-company transferees may continue to work for the new entity on the strength of their existing work permit. Where there is a change in the name and entity, this should be reflected on any work permit renewal and in FOSS remarks. There may be implications for other federal and provincial partner agencies, such as the Canadian Revenue Agency or Service Canada. The source of the foreign national's salary and benefits is **not** a factor to be taken into consideration.

C) Qualifying relationship between the employer and temporary foreign worker

Must take a position in Canada under intra-company transferee provisions means that an employer-employee relationship with the Canadian branch of the company to which they are being transfered must exist. The essential element in determining this relationship is the right of the employer to order and control the employee in the performance of their work. While full-time employment by the Canadian branch is anticipated, there is no requirement that the foreign national perform full-time service in Canada. An executive, for example, could divide normal working hours between offices in Canada and the U.S. There is no requirement that the foreign national be paid from the Canadian entity, however, this is usually the case.

Evidence that an employer is a legal entity may be articles of incorporation, partnership agreements, license to do business, evidence of registration with CRA as an employer.

Non-qualifying business relationships would be those based on contracts, licensing arrangements and franchise agreements. Associations between companies based on factors such as ownership of a small amount of stock in another company, exchange of products or services, licensing or franchising agreements, membership on boards of directors, or the formation of consortia or cartels do not create affiliate relationships between the entities.

An applicant seeking entry to open a new office on behalf of the foreign enterprise may also qualify, after having established that the enterprise in Canada is expected to support a managerial or executive position or, in the case of specialized knowledge, is expected to be doing business. Factors such as the ownership or control of the enterprise, the premises of the enterprise, the investment committed, the organizational structure, the goods or services to be provided and the viability of foreign operation should be considered.

D) Qualifying job positions

Executives and senior managers

As in NAFTA, this group includes persons in the senior executive or managerial categories, in possession of a letter from a company conducting business in Canada, identifying the holder as an employee of a branch, subsidiary, affiliate or parent of the company which is located outside Canada. The holder must be transferring to a Senior Executive or Managerial level position at a permanent and continuing establishment of that company in Canada for a temporary period.

Executive capacity means that the employee primarily:

- directs the management of the organization or a major component or function of the organization;
- establishes the goals and policies of the organization, component, or function;
- exercises wide latitude in discretionary decision-making; and

- receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Managerial capacity means that the employee primarily:

- manages the organization, a department, subdivision, function, or component of the organization;
- supervises and controls the work of:
    - other managers or supervisors;
    - professional employees, or
    - manages an essential function within the organization, or a department or subdivision of the organization.
- has the authority to hire and fire, or recommend these and other personnel actions, such as promotion and leave authorization; if no other employee is directly supervised, functions at a *senior* level within the organization hierarchy or with respect to the function managed; and,
- exercises discretion over the day-to-day operations of the activity or function for which the employee has the authority.

In general, executives and managers plan, organize, direct, or control the activities of a business, or a division of a business (e.g. Vice President of Marketing), either independently or through middle managers. They are frequently responsible for the implementation of the policies of a business. More senior persons, either alone or in conjunction with a board of directors, may formulate policies which establish the direction to be taken by the business.

Functional managers, in the intra-company transferee context, manage an essential function in the company, but do not necessarily manage staff. Essential function generally means a function that is indispensible or important to achieving the organization's goals. A functional manager must operate at a senior level within the organization or within the function managed, and have discretion over the day-to-day operations of the function. Factors that may support functional manager status include:

- providing coordination and guidance to other managers;
- having responsibility over assets or sales with a large dollar value;
- directing the work of subcontracted firms.

Excluded will be persons who are in positions that are more accurately defined as junior management. Positions defined as managing supervisor, supervisor, or foreman, or persons with managerial sounding titles only, would not qualify. A first line supervisor is not considered to be acting in a managerial capacity unless the employees who are being supervised are professionals. A manager does not primarily perform tasks required in the production of a product or in the delivery of a service.

All persons included should be in the NOC group 0 applying to Management Occupations. Only those persons whose positions are defined as Senior Managers who plan, organize, direct or control a business should be included. This exemption is not available to persons whose positions are more accurately defined as middle managers. As a result:

NOC groups 0013 to 0016 should be included;
NOC groups 01 to 09 may be included depending on the responsibility of the position.

Specialized knowledge workers

The worker must demonstrate "specialized knowledge" of a company's product or service and its application in international markets, **or an advanced level** of knowledge or expertise in the

organization's processes and procedures (product, process and service can include research, equipment, techniques, management, or other interests).

The determination of whether a worker possesses specialized or advanced knowledge does not involve a test of the Canadian labour market, that is, it is possible to have similarly employed Canadian workers. However, officers must ensure that the knowledge that the applicant possesses is not general knowledge held commonly throughout the industry and that it is truly specialized.

Specialized knowledge is unusual and different from that generally found in a particular industry. The knowledge need not be proprietary or unique, but it should be uncommon.

> **TIP:** A person who possesses specialized knowledge would usually be in a position that is critical to the well-being of the enterprise.

As a general guide, specialized knowledge may involve a person's familiarity with a product or service which no other company makes, or that other companies make, but differently. For example, the knowledge required to sell, manufacture or service a particular product is different than that of other products to the extent that the Canadian branch would experience significant disruption of business in order to train a new worker to assume those duties. Similarly, an eligible applicant could have knowledge of a particular business process or methods of operation that are unusual. The knowledge is not generally identified and is of some complexity, meaning that it cannot be easily transferred to another individual in the short term. Specialized knowledge would normally be gained by experience with the organization and used by the individual to contribute significantly to the employer's productivity or well being. **Evidence of such knowledge must be submitted.**

Some characteristics of a worker who has specialized knowledge are:
- possesses knowledge that is valuable to the employer's competitiveness in the market place;
- uniquely qualified to contribute to the Canadian employer's knowledge of foreign operating conditions;
- knowledge has been gained through extensive prior experience with the employer;
- has been utilized as a key employee abroad in significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position.

> **TIP:** The test is whether the applicant possesses such knowledge, not whether it exists in Canada.

Advanced knowledge is complex or high-level knowledge; not necessarily unique or known by only a few individuals (or proprietary), but knowledge that would require a specific background and/or extensive experience with the employer who is transferring the worker, or experience from within the same industry. The person may possess key knowledge which enables them to contribute to the Canadian office's ability to operate competitively in another country.

> **TIP:** The knowledge need not necessarily be truly "proprietary" in the sense of "the company actually owns the knowledge", yet it has to be knowledge beyond what is commonly found within the industry. It could be non-proprietary knowledge that a particular company applies in a unique way that makes it knowledge beyond what is common in the industry.

Additional Guidance

When determining if a Temporary Foreign Worker (TFW) indeed holds specialized knowledge, officers can use the following questions to better guide their opinion/decision:

- What level is the position's NOC? What diploma was required for the position?
- What is the applicant's knowledge of the company (proprietary) versus regular knowledge?
- What duration of experience was necessary to actually acquire said knowledge?

TIP: A good case for specialized knowledge could involve high skill NOC codes (A, B and 0), with the appropriate degree and extensive experience in a company. For a person with a high-skill NOC code position, an appropriate degree and only one year in a company, a case has to be made by the client as to how the person has proprietary knowledge (years of experience in the field, with other companies or just out of school but has acquired knowledge of components specific to the company).

Requests for a C-12 exemption for specialized knowledge for a position with a low-skill NOC code should be looked at in greater detail. The truly specialized knowledge in lower-skill NOC code positions should have been gained through many years of work in the domain, although one year of experience with the company may also be sufficient in some cases.

- How many years of experience does the TFW have with the foreign company?
- How many years of experience does the TFW have in the industry?

TIP: The longer the experience, the more likely the knowledge is indeed "specialized". Although the TFW may have only one year of experience with the foreign company, they may be considered to have proprietary knowledge beneficial to the Canadian company if they demonstrate comprehensive knowledge of a specific facet of the company (which may have been acquired within that year or had worked on extensively) accompanied by studies in the appropriate field AND/OR years of experience in an associated industry.

- Does the TFW's salary – when considered along with years of experience – support the claim?

TIP: Job offers must present salaries that are realistic in terms of Canadian wage-levels for the occupation concerned.

- What is the size of the business?
- What level of training is needed for a position that requires "specialized knowledge?

TIP: If the specialized knowledge can be obtained by a short period of in-house or on-the-job training, it likely is not very "specialized". If the person must take a series of progressively more complex training, perhaps combined with hands-on experience over a somewhat extended period of time and perhaps under the direction of a more experienced person, it is more likely that the knowledge is "specialized".

- Have any of the following documents been provided to prove the claim of specialized knowledge: an outline of why specialized knowledge applies, a resume, reference letters, letters of support from the company?

TIP: It is the responsibility of the applicant to show that an employer needs them in Canada and to show what sort of specialized technical or managerial expertise they have that could not be sourced within a reasonable period of time or at a reasonable cost from within Canada.

Other Considerations

The duration of the job offer is not a criterion that should influence the opinion. For example, a three month offer does not mean specialized knowledge is not required or may not be beneficial to Canadian employees in such a short period.

In the final analysis, it is a question of credibility. Officers will be required to assess all the information presented to them and then use their good judgement to come to a decision. The onus is always on the applicant to support their application with credible documentation and explain in full the purpose and scope of their work in Canada, either in writing or at an interview.

E) Other requirements

Eligibility criteria applicable to both the senior managerial and specialized knowledge categories are:

- applicants in the intra-company category must have worked continuously (full-time, not accumulated part-time) for at least one year within the previous three years in a similar position for the company that plans to transfer them to Canada. As in NAFTA, the applicant does not have to be currently an employee of the company that plans to employ them;
- intra-company transferees are not necessarily required to re-locate to Canada, however, they are expected to actually occupy a position within the Canadian branch of the company; there should be a clear employer-employee relationship with the Canadian company, and the Canadian company should be directing the day-to-day activities of the foreign worker; this is especially important for employees working at client sites and not at the parent, branch, affiliate, or subsidiary;
- if an applicant is not going take a position in a Canadian branch, officers should examine whether they might better be classified as a business visitor, which includes provisions for after-sales service (See Section 5.2, Work without a work permit R186(a)—Business visitor).

Rather than issuing multiple short-term permits for each specific project, a work permit for a maximum duration of one year may be issued for a number of specific projects. This applies to projects taking place at the company premises in Canada or at a client site (generally seen as applicable for persons the company needs to transfer for their specialized knowledge). Long-term work permits, more than one year, in the intra-company transferee category should not be issued for service personnel living outside Canada whom the company wishes to parachute into a client site of the international company on a as-needed basis.

Documentation requirements:

- confirmation that the person has been employed continuously (full-time, not accumulated part-time) by the enterprise outside Canada for one year within the three-year period immediately preceding the date of application;
- outline of the applicant's position in an executive or managerial capacity or one involving specialized knowledge (i.e. position, title, place in the organization, job description);
- in the case of "specialized knowledge", evidence that the person has such knowledge and that the position in Canada requires such knowledge;
- outline of the position in Canada (namely, position, title, place in the organization, job description);
- indication of intended duration of stay; and
- description of the relationship between the enterprise in Canada and the enterprise in the foreign country; the officer may request tangible proof to establish the relationship between the Canadian and foreign organization wishing to make the transfer.

F) International Agreements

FTA intra-company transferees

Appendixes B and G provide terminology explanations relevant to the general provisions and elaborate on documentary requirements, however, the criteria are essentially the same as the general criteria. For applicants eligible under the NAFTA or other FTAs similar to the NAFTA category, officers should process them under R204(a), T24, instead of the generally applicable Regulation noted above.

Note: The duration for a T24 NAFTA work permit is now the same as the general provisions under IRPA (See table Section 11.2).

GATS intra-company transferees

The GATS criteria are essentially the same as the general criteria. All 150 member countries of the World Trade Organization (WTO), are thus eligible for the commitments that Canada has granted with respect to temporary entry (including entry of 'specialized knowledge workers'). Therefore, CIC has expanded the general criteria in order to achieve transparency and an easier decision-making process for officers. Even where the applicant may meet the more specific criteria under GATS, they should be processed under the general provision, R205(a), C12.

Comparison of IRPA General Provisions and NAFTA/CCFTA
The tables below illustrate the harmonization of the general provisions with NAFTA provisions.

EXECUTIVES

Executives, intra-company transferees:
- direct the management of the company or a major component or function of the company
- establish the goals & policies of the company, component or function

Doing business: regular, systematic, and continuous production of goods or delivery of services

General Immigration Provision Confirmation Exempt Code C12	**FTA** Confirmation Exempt Code T24
Citizenship: no restrictions	**Citizenship:** US or Mexican (NAFTA); Chilean (CCFTA); or Peruvian (and permanent residents) (Canada-Peru FTA)
Employment criteria: continuous employment for **1** year within the previous **3** years in a similar position with the company	**Employment criteria:** continuous employment for **1** year (six months for the Canada-Peru agreement) within the previous **3** years in a similar position with the company
Other criteria: • Companies: ◦ must have a qualifying business relationship: parent, subsidiary, branch, or affiliate (does not include franchise or license agreements); ◦ both must be doing business • Employee: ◦ must be working in a similar position with the company in a foreign jurisdiction ◦ is taking employment at a permanent and continuing establishment of that company	**Other criteria:** • Companies: ◦ must have a qualifying business relationship: parent, subsidiary, branch, or affiliate (does not include franchise or license agreements); ◦ both must be doing business • Employee: ◦ must be working in a similar position with the company outside of Canada. ◦ is taking employment at a permanent and continuing establishment of that company

Documents required for entry: **From *executive:*** • proof of citizenship • documentation from *Employer* **From *employer:*** • confirmation that the employee has been employed in a similar position by the company continuously for **1** year (full-time) within the **3**-year period immediately preceding the application • outline of the employee's position outside of Canada: job title, place in the company, job description, duties • outline of the employee's intended position in Canada • arrangements for remuneration • length of employee's intended stay in Canada • description of the qualifying relationship between the Canadian and the foreign company • evidence that both companies are doing business	**Documents required for entry:** **From *executive:*** • proof of citizenship (the Canada-Peru agreement allows for permanent residents as well) • documentation from *Employer* **From *employer:*** • confirmation that the employee has been employed in a similar position by the company continuously (full-time) for **1** year (six months for the Canada-Peru agreement) within the **3**-year period immediately preceding the application • outline of the employee's position outside of Canada: job title, place in the company, job description, duties • outline of the employee's intended position in Canada • arrangements for remuneration • length of employee's intended stay in Canada • description of the qualifying relationship between the Canadian and the foreign company • evidence that both companies are doing business
Duration of stay: maximum **7** years; initial work permit may not exceed **3** years	**Duration of stay:** maximum **7** years; initial work permit may not exceed **3** years
Application for work permits: POEs or visa posts; renewals through CPC-V	**Application for work permits:** POEs or visa posts; renewals through CPC-V

MANAGERS

Senior managers, intra-company transferees:
- manage the company, or a department, subdivision, function, or component of the company
- manage:
  - other managers or supervisors
  - professional employees, or
  - an essential function

Doing business: regular, systematic, and continuous production of goods or delivery of services

General Immigration Provision Confirmation Exempt Code C12	**FTA** Confirmation Exempt Code T24
Citizenship: no restrictions	**Citizenship:** US or Mexican (NAFTA); Chilean (CCFTA); or Peruvian (and permanent residents) (Canada-Peru FTA)
Employment criteria: continuous full-time employment for **1** year within the previous **3** years in a similar position with the company outside Canada	**Employment criteria:** continuous (full-time) employment for **1** year (six months for the Canada-Peru agreement) within the previous **3** years in a similar position with the company

Other criteria: • Companies: ° must have a qualifying business relationship: parent, subsidiary, branch, or affiliate (does not include franchise or license agreements); ° both must be doing business. • Employee: ° must be working in a similar position with the company in a foreign jurisdiction; ° is taking employment at a permanent and continuing establishment of that company.	**Other criteria:** • Companies: ° must have a qualifying business relationship: parent, subsidiary, branch, or affiliate (does not include franchise or license agreements); ° both must be doing business • Employee: ° must be working in a similar position with the company outside of Canada; ° is taking employment at a permanent and continuing establishment of that company.
Documents required for entry: **From *manager:*** • proof of citizenship • documentation from *Employer* **From *employer:*** • confirmation that the employee has been employed in a similar position by the company continuously for **1** year (full-time) within the **3-**year period immediately preceding the application • outline of the employee's position outside of Canada: job title, place in the company, job description duties • outline of the employee's intended position in Canada • arrangements for remuneration • length of employee's intended stay in Canada • description of the qualifying relationship between the Canadian and the foreign company • evidence that both companies are doing business	**Documents required for entry:** **From *manager:*** • proof of citizenship (the Canada-Peru agreement allows for permanent residents as well) • documentation from *Employer* **From *employer:*** • confirmation that the employee has been employed in a similar position by the company continuously for **1** year (six months for the Canada-Peru agreement) within the **3**-year period immediately preceding the application • outline of the employee's position outside of Canada: job title, place in the company, job description duties • outline of the employee's intended position in Canada • arrangements for remuneration • length of employee's intended stay in Canada • description of the qualifying relationship between the Canadian and the foreign company • evidence that both companies are doing business
Duration of stay: maximum 7 years; initial work permit may not exceed **3** years	**Duration of stay:** maximum **7** years; initial work permit may not exceed **3** years
Application for work permits: POEs or visa posts; renewals through CPC-V	**Application for work permits:** POEs or visa posts; renewals through CPC-V

SPECIALIZED KNOWLEDGE WORKERS

Specialized knowledge workers, intra-company transferees:
- have ***special knowledge*** of the company's product or service and its application in international markets, or an ***advanced*** level of knowledge of the company's processes and procedures;
- normally have knowledge related to the proprietary interests of the company.

Doing business: regular, systematic, and continuous production of goods or delivery of services.

General Immigration Provision	**FTA**

Confirmation Exempt Code C12	Confirmation Exempt Code T24
Citizenship: no restrictions	**Citizenship:** US or Mexican (NAFTA); Chilean (CCFTA); or Peruvian (and permanent residents) (Canada-Peru FTA)
Employment criteria: continuous full-time employment for **1** year within the previous **3** years in a similar position with the company	**Employment criteria:** continuous employment for **1** year (six months for the Canada-Peru agreement) within the previous **3** years in a similar position with the company

Other criteria:
• Companies:
  ◦ must have a qualifying business relationship: parent, subsidiary, branch, or affiliate (does not include franchise or license agreements);
  ◦ both must be doing business.
• Employee:
  ◦ must be working in a similar position with the company in a foreign jurisdiction;
  ◦ is taking employment at a permanent and continuing establishment of that company.
	Other criteria:
	• Companies:
	  ◦ must have a qualifying business relationship: parent, subsidiary, branch, or affiliate (does not include franchise or license agreements);
	  ◦ both must be doing business.
	• Employee:
	  ◦ must be working in a similar position with the company outside of Canada;
	  ◦ is taking employment at a permanent and continuing establishment of that company.

Documents required for entry: **From *specialist:*** • proof of citizenship • documentation from *employer* **From *employer:*** • documentation establishing the employee's specialized knowledge • confirmation that the position in Canada requires such knowledge • confirmation that the employee has been employed in a similar position by the company continuously for **1** year (full-time) within the **3**-year period immediately preceding the application • outline of the employee's position outside of Canada: job title, place in the company, job description, duties • outline of the employee's intended position in Canada • arrangements for remuneration • length of employee's intended stay in Canada • description of the qualifying relationship between the Canadian and the foreign company • evidence that both companies are doing business	**Documents required for entry:** **From *specialist:*** • proof of citizenship (Canada-Peru agreement allows for permanent residents as well) • documentation from *employer* **From *employer:*** • documentation establishing the employee's specialized knowledge • confirmation that the position in Canada requires such knowledge • confirmation that the employee has been employed in a similar position by the company continuously for **1** year (six months for Canada-Peru agreement) within the **3**-year period immediately preceding the application • outline of the employee's position outside of Canada: job title, place in the company, job description, duties • outline of the employee's intended position in Canada • arrangements for remuneration • length of employee's intended stay in Canada • description of the qualifying relationship between the Canadian and the foreign company • evidence that both companies are doing business
Duration of stay: maximum **5** years; initial work permit may not exceed **3** years	**Duration of stay:** maximum **5** years; initial work permit may not exceed **3** years
Application for work permits: POEs or visa	**Application for work permits:** POEs or visa

posts; renewals through CPC-V

posts; renewals through CPC-V

Breaks in Canadian service

Most foreign nationals who have worked in Canada under the intra-company transferee category may again receive consideration under this category if they have been on an assignment with a branch of the same company in a foreign jurisdiction for at least 12 months. This includes all NAFTA applicants pursuant to T24 and specialized knowledge applicants under C12. Please refer to Section 11.2.

For example, a foreign national who worked in Canada as a specialized knowledge worker for two years for the Canadian entity, then transferred to an Australian branch of the same company for two years, would be eligible for consideration under the intra-company transferee provisions as a specialized worker for another five-year period. The initial work permit could only be for a three-year duration under C12.

Intra-company transferee duration of work permit limit

After intra-company transferees have reached their maximum work permit duration (seven years for executives and senior managers and five years for specialized knowledge workers), they must complete one year of full-time employment in the foreign company outside Canada if they wish to re-apply as an intra-company transferee. This requirement, which exists in NAFTA, applies to all intra-company transferees, whether they enter under the IRPA general provisions of R205(a) or under international trade agreement provisions of R204(a). It also applies to foreign nationals who wish to switch from a work permit issued under R205(a) to a work permit issued under R204(a).

Harmonization of NAFTA and the general provisions will help employers in human resource planning and simplify the administration of intra-company transferees provisions for foreign nationals and immigration and visa officers.

5.32. Canadian interests: Significant benefit—Emergency repair personnel R205(a), C13

Emergency repair personnel are persons whose admission is required in Canada to carry out emergency repairs to industrial equipment in order to prevent disruption of employment. They require work permits, but are exempt from an LMO. They should be in possession of a letter, telex or fax indicating that the nature of their work is an emergency.

5.33. Canadian interests: Reciprocal employment, C20 General guidelines R205(b)

R205(b) allows foreign workers to take up employment when reciprocal opportunities are provided for Canadian citizens to take temporary employment abroad. Exchange programs offer the opportunity of gaining international experience and allow the cultural exchange of both foreign and Canadian participants and their employers. Entry under reciprocal provisions should result in a neutral labour market impact.

There are formally-recognized reciprocal programs such as the DFAIT-administered international youth exchange programs (discussed below). However this provision also allows for admission of workers in other cases where reciprocity is demonstrated by the Canadian employer (or specific program administrator). Academic institutions may initiate exchanges under C20 as long as they are reciprocal, and licensing and medical requirements (if applicable) are met. A copy of the exchange agreement between the Canadian and foreign parties must be provided by the applicant, or a letter from the receiving Canadian institution, or work contract. *Bona fide* evidence of reciprocity will allow the officer to issue a work permit. The onus is on the institutions and/or applicants to demonstrate that reciprocity exists.

5.34. Canadian interests: Reciprocal employment—International Youth Programs R205(b), C21

International Youth Programs (IYP) allow young citizens between the ages of 18 and 35 to work temporarily in another country where they acquire new skills, gain exposure to the values of the host country and develop a better understanding of other cultures (See Appendix E, individual visa office Web sites and DFAIT's Web site at http://www.international.gc.ca/iyp-pij/ .

IYP is managed by DFAIT/PREE (tel. 613-996-4527), who negotiate the terms of bilateral agreements and determine annual numerical limits, where applicable, for the admission of participants. DFAIT does not finance or subsidize international exchange participants.

IYP is an umbrella organization that offers international reciprocal programs such as the Working Holiday Program, Young Professionals/Young Workers, and Co-operative Education work placement. Also under IYP, DFAIT supports a number of Canadian organizations that have multi-lateral arrangements with their partners in other countries. For example: the International Association for Students of Economics and Commerce (IASEC) and the International Association for the Exchange of Students for Technical Experience (IAESTE), which provide university and college students and recent graduates with the opportunity to combine periods of employment with time for leisure and exploration of the host country. SWAP, formerly "Student Working Abroad Programs", is now officially referred to by DFAIT as "SWAP Working Holidays". (For the purposes of this manual and the table in Appendix E, it will still be referrred to as just "SWAP".) It is a general program administered in Canada by the Canadian Federation of Students (CFS) and its subsidiary, the Canadian Universities Travel Services (Travel Cuts) (tel. 416-966-2887 ext. 222). Prospective SWAP participants should apply at SWAP affiliates abroad.

All foreign nationals participating in these programs, except citizens of the U.S., should apply from outside of Canada for their work permits pursuant to R198(2)(c). Applicants must be citizens of the countries with which Canada holds these reciprocal arrangements, and must apply at the Canadian mission responsible for their country (i.e., Australians must apply in Sydney, Swedes must apply in London, etc.). Exception: foreign nationals participating under partner organizations, such as IASEC or IAESTE, from countries where Canada does not have a formal bilateral arrangement, may submit an application to the Canadian mission or appropriate authority in the country where they have been lawfully admitted.

Note: Citizens of the U.S. accepted for any of these reciprocal exchange programs may apply for their work permits at any of the consulates or at ports of entry. As the quota is not generally exceeded, there is currently no need for management of the quota from any one mission within the U.S. They should have an acceptance letter from the participating organization. Inland offices may not issue an initial work permit but they have the authority to extend a valid work permit provided the applicant is still within the allowable duration period.

Repeat participation

Foreign nationals are generally permitted to work in the same category (Working Holiday Program, Young Professionals/Young Workers, Co-operative Education work placement) only once. They can re-apply under another category. Each stay must be discontinuous.

Exceptions:

Australia – Participants from Australia may re-apply under the same categories more than once (no limit within the age requirement).

United States – Participants from the U.S. under SWAP can re-apply for additional stays in the program following the completion of another year of full-time post-secondary study.

United Kingdom and Ireland – Participants can re-apply to do additional years in the same category (1+1+1 etc.).

IASEC and IAESTE – Participants may re-apply for an additional stay. Stays must be discontinuous.

All of the C21 programs are fee exempt.

5.35. Canadian interests: Reciprocal employment—Academic exchanges R205(b), C22

Academia is a field where exchanges and mobility are very common, especially at the recent post- graduate level. (Post-doctoral fellows and award recipients are now facilitated under R205(c)(ii), C44). Strict job-for-job reciprocity is not necessarily required. CIC recognizes that opportunities exist for Canadians to take similar positions in foreign educational institutions, and therefore allows for the application of R205(b), C22 for the situations described below:

Guest lecturers

Work permits exempt from an LMO under R205(b), C22 may be issued to guest lecturers. They are defined as persons invited by a post-secondary institution to give a series of lectures and who occupy a temporary position of a non-continuing nature (which does not comprise a complete academic course) for a period of less than one academic term or semester.

Teachers, elementary and secondary

Persons who are engaged by educational institutions as elementary and secondary teachers coming to Canada under reciprocal exchange agreements arranged between foreign educational authorities and Canadian provincial governments or school boards may be issued work permits under this category as well.

Included are pre-school, elementary and secondary school teachers coming to Canada under the Reciprocal Exchange Agreement between New Zealand and the province of Ontario. It should be noted that family members of Australian and British teachers coming to Canada under the terms of a Reciprocal Exchange Agreement may be issued work permits under the general C20 category.

Visiting professors

Visiting professors may be issued work permits pursuant to R205(b), C22. They are people working for a period of not more than two academic years to take a position with a post secondary institution and who retain their position abroad. Visiting professors may also include those on sabbatical who are doing collaborative research with a Canadian post-secondary institution. They would be paid by the foreign university that employs them outside Canada.

5.36. Canadian interests: Reciprocal employment—General examples R205(b), C20

Canada World Youth Program

This is an international exchange involving young people from a number of foreign countries whose brief living and working experience in Canada provides them and their Canadian hosts with a better appreciation of different cultures. Participants normally spend from 89 to 110 days in Canada and “work” full-time for the entire period at a variety of jobs, including farm work and social/community services, e.g., schools institutions, for the aged and handicapped. The “work” performed is strictly voluntary.

Participants will receive open unrestricted work permits. For this reason, they must have a medical examination. Fee exempt.

Supporting documentation: a letter from Canada World Youth.

Cultural agreements

Persons entering Canada to take employment under the terms of cultural agreements between Canada and the following countries: Belgium, Brazil, Germany, Italy, Japan and Mexico. Fee exempt.

Cultural agreement between the Government of Canada and the Government of the French Republic

Allows for temporary employment under the cultural agreement between the Government of Canada and the Government of the French Republic, or under the terms of any educational, cultural, scientific, technical or artistic agreement made between France and a province of Canada within the framework of that agreement, provided that the applicants present to the officer a letter of acceptance by the appropriate governing body. Fee exempt.

Supporting documentation: letter from the appropriate governing body.

Cultural exchange between the Government of Canada and the People's Republic of China

Under the terms of the cultural exchange program relating to the arts, archives, libraries, journalism, radio, television, film, literature, translation, architecture, social sciences and sports. Fee exempt.

5.37. Work related to a research, educational or training program R205(c)(i), C30

The following academic or training programs and research activities are designated as work which can be performed by a foreign national based on the criteria listed in R205(c)(i), C30:

1. foreign students, excluding those coming to work in medical residency or extern positions (but not those in the field of veterinary medicine), whose intended employment forms an essential and integral part of their course of study in Canada and this employment has been certified as such by a responsible academic official of the training institution and where the employment practicum does not form more than 50% of the total program of study..

2. special program students under the sponsorship of the Canadian International Development Agency (CIDA) when the intended employment is part of the student's program arranged by CIDA;

3. persons coming to Canada to work temporarily for the International Development Research Centre of Canada;

4. persons sponsored by Atomic Energy of Canada Ltd., as distinguished scientists or post-doctoral fellows;

5. persons sponsored by the National Research Council of Canada (NRC) and the Natural Sciences and Engineering Research Council of Canada (NSERC) as distinguished scientists or scholars coming to participate in research for the NRC and the NSERC;

6. persons coming from Commonwealth Caribbean countries for training under the terms of the Official Development Assistance Program administered by the Canadian International Development Agency.

7. holders of research chair positions at a Canadian university, nominated for their research excellence, and partially or wholly funded by federal or provinicial governments.

Work related to graduation requirements for foreign students, excluding medical interns and externs and resident physicians C30.

This provision applies to both privately and publicly funded institutions. **It applies only to persons who hold study permits, except for the case of minors in high school who do not require study permits but who require work experience in order to graduate.** (See British Columbia example, below.)

Note: This provision only applies to course requirements of *Canadian* institutions, for students actually studying in Canada. A foreign student who comes to Canada for a year or a term may qualify for C30 if the employment forms an essential and integral part of their course of study in Canada. If the employment is only a requirement of the foreign institution, C30 does not apply.

In cases such as these, the letter provided by the educational institution should establish clearly that the work is a normal component of the academic program which all participants are expected to complete in order to receive their degree, diploma or certificate. The most commonplace example would be undergraduate co-op programs at universities and colleges. An open work permit should be issued with the academic institution listed as the employer. In cases where several work periods are necessary throughout the academic course (e.g., five work terms and eight study terms for a degree), the work permit should be valid for the same period as the study permit.

Note: Additional eligibility criteria: For the purposes of C30, an educational institution is a university, college, or school. Professional/technical associations which offer courses are not eligible.

Foreign nationals coming temporarily to Canada to occupy post-graduate medical training positions including medical residents, externs or fellows, who have contact with patients, require a work permit and a positive or neutral Labour Market Opinion from Service Canada.

Career colleges and language schools

Students (who hold study permits) attending career colleges or language schools (e.g. ESL/FSL) may also be eligible under this exemption, if there is a work practicum component to their study program. Some of the common elements to look for when these students apply under C30 include the following:

- written evidence from the school that a work component is required for successful completion of the course of study (such evidence may be in the form of a letter from the school, or a copy of the school's curriculum);
- details of the work to be performed. Normally, the work will be supervised, and involve a specific number of hours per term or semester. The work may be unpaid at times. The school should be in a position to name the businesses or types of businesses involved in this kind of study/work program;
- The work practicum cannot comprise more than 50% of the total program of study

Province of British Columbia

The Province of British Columbia requires all high school students in grades 11 and 12 to obtain work experience in order to graduate. This requirement applies to students at all institutions authorized by the Ministry of Education to grant high school diplomas, whether a private or public institution.

In these cases, the employer is the school or school district, the location of employment is British Columbia and the employment is open.

Although it has been indicated to B.C. school authorities that the school should provide a letter to this effect, such is not imperative. If an officer knows for certain that the student is registered at the Grade 11 and/or 12 levels in BC, and the student submits an application, a work permit concurrent with the study period should be granted under exemption C30. Note, however, that only those students who meet the requirements of R199 (work permit applications after entry) will be eligible to apply inland.

Fee exempt.

5.38. Public policy, competitiveness and economy R205(c)(ii)

The following programs are designated as work that can be performed by a foreign national based on the criteria listed in R205(c)(ii).

A. Spouses or common-law partners of skilled workers, C41

Spouses or common-law partners of skilled people coming to Canada as temporary foreign workers may themselves be authorized to work without first having a confirmed job offer. Eligibility requirements of the principal foreign worker which allow the spouse to qualify for a work permit are as follows:

- The principal foreign worker must be doing work which is at a level that falls within National Occupational Classification (NOC) Skill Levels 0 , A or B. See the NOC site on HRSDC's web page at http://www23.hrdc-drhc.gc.ca/2001/e/generic/welcome.shtml. The skill levels can be found in the Matrix on the left-hand side of the screen.
- These skill levels include management and professional occupations and technical or skilled tradespersons.
- The principal foreign worker must either hold a work permit that is valid for a period of at least six month's duration, or, if working under the authority of R186 without a work permit, must present evidence that they will be working for a minimum of six months.
- The principal foreign worker and spouse must physically reside in Canada.

Note: Spouses or common-law partners of work permit holders who have been nominated for permanent residence by a province will be entitled to open work permits for the duration of the work permit of the provincial nominee principal applicant, **irrespective of the skill level of the principal applicant's occupation**. While there is reluctance on the part of CIC and HRSDC to support work permits for lower-skilled workers because their skills profile would not normally qualify them for permanent immigration to Canada, concerns regarding these persons going out of status and remaining in Canada illegally are mitigated when the foreign national has been nominated for permanent residence. If a province feels a foreign national is sufficiently needed in its labour market to nominate that person, then having that job filled is clearly important, irrespective of where in the NOC that particular job is classified. Since, in the long run, the spouse or common-law partner is going to be a member of the Canadian labour market anyway, allowing them to enter the market and begin work as soon as possible will hasten the integration process

Work permit issuance:

- The spouse's or common-law partner's work permit may be issued for a period that ends no later than the work permit of the principal foreign worker, or for the duration of employment of the principal worker.
- The spouse or common-law partner may be issued an "open" work permit, i.e., not job-specific.

B. Spouses or common-law partners of foreign students, C42

Note: The provisions outlined for C42 and C43 only apply to students engaged in full-time studies at a Canadian university, community college, CEGEP, publicly funded trade/technical school or at a private institution authorized by provincial statute to confer degrees.

Spouses or common-law partners of certain foreign students are allowed to accept employment in the general labour market without the need for an LMO. This exemption is intended for spouses who are not, themselves, full-time students.

Eligibility

Applicants must provide evidence that they are:

- the spouse or common-law partner of a holder of a study permit who is attending full-time a post-secondary institution, which is a also a publicly-funded degree or diploma-granting institution (as noted above); or
- the spouse or common-law partner of a person who has a valid work permit to work at a job related to their course of study, after graduation (under C43).

Spouses or common-law partners of full-time students are eligible for open or open/restricted work permits, depending on whether or not a medical examination has been passed. There is no need for an offer of employment before issuing a work permit.

Validity

Work permits may be issued with a validity date to coincide with the spouse's study permit, or the period of time the spouse is entitled to work after graduation (under C43).

C. Post-graduation employment, C43

See OP12, section 5.24

D. Post-doctoral fellows and award recipients, C44

Post-doctoral fellows hold a doctorate degree (Ph.D.) or its equivalent. They would be appointed to a time-limited position granting a stipend or a salary to compensate for periods of teaching, advanced study and/or research. It is work designed to obtain the highest expertise possible in a particular discipline and candidates are chosen on the basis of academic excellence.

The applicant must have completed their doctorate and be working in a related field to that in which they earned their Ph.D. to be exempt from an LMO. The person must have graduated, but there is no restriction with regard to date of graduation. Note that physicians who are conducting post-graduate research, and who have *no* patient contact, may be included in this category.

Post-doctoral fellows can be either the direct recipients of an award or be offered a time-limited position to undertake research on behalf of or as part of a team of researchers. Universities vary in their methods and criteria used in assessing candidates and offering post-doctoral fellowships. Officers should assess the written offer from a responsible academic official (professor or higher) which will state the amount of remuneration, location, nature and expected duration of the term of employment, and will not be concerned with the source of remuneration.

Occupational code

Given the absence of an occupational code in the NOC for post-doctoral fellows, please use the applicant's specialty. For example, an applicant in Earth Sciences could be coded 2113 as a geologist or 2115.2 as a soil scientist.

Please DO NOT code post-doctoral fellows as post-secondary research assistants, NOC code 4122.1, as this creates internal problems at universities and impacts applications for permanent residence, since the educational and skill levels are lower.

Research award recipients paid by Canadian institutions

Also eligible are holders of academic research awards involving work and remuneration by Canadian institutions where the award is granted strictly on the basis of academic excellence. The candidate must be the direct recipient of the award, i.e., the candidate must have a significant role to play or value to add to a particular research project, and not just be a member of a research team (doing data collection or principally involved in the more mundane aspects of the research being conducted).

Research award recipients paid by foreign institutions

Holders of academic research awards of a foreign country and invited by Canadian institutions to conduct their activities in Canada, but who are supported by their own country, are also eligible.

Note: Persons who are doing self-funded research may meet the definition of business visitor and thus be eligible to work without having to obtain a work permit. There should be no displacement of Canadian or permanent resident workers, nor should there be any employer-employee relationship. In addition, the individual or the Canadian institution must not receive remuneration for the research.

E. Off-campus employment, C25

See OP12, section 5.23

5.39 Canadian interests: Charitable or religious work R205(d), C50

Includes updates from OB 64.

R205(d) LMO exemption applies to charitable or religious workers who are carrying out duties for a Canadian religious or charitable organization and whose duties while in the service of the Canadian religious or charitable organization would not be competing directly with Canadian citizens or Permanent Residents in the Canadian labour market. It does not apply to religious workers who are entering to preach doctrine or minister to a congregation, as these people can be admitted pursant to R186(l).

See 5.13 for guidance on determining the genuineness of a job offer.

Note: A non-profit organization is not necessarily a charitable one. A charitable organization has a mandate to relieve poverty, or benefit the community, educational, or religious institutions.

Note: Canada Revenue Agency (CRA) has a list of all Canadian charities in good standing available through their Web site at http://www.cra-arc.gc.ca/tx/chrts/menu-eng.html. It is not sufficient for the foreign national to be simply working without payment for a CRA registered charity in order to be considered a charitable worker and exempt from the LMO requirement. The activities they are performing for the registered charity must also not be competing directly with Canadian citizens or Permanent Residents in the Canadian labour market.

An applicant may be considered to be engaging in charitable or religious work if they meet the following conditions:

- the individual will not receive remuneration, other than a small stipend for living expenses;
- the organization or institution which is sponsoring the foreign worker will not, itself, receive direct remuneration from any source on behalf of, or for, the services rendered by the foreign worker; and
- the work goes above and beyond normal work in the labour market, whether remunerated in some manner or not, for example:
  - organizations which gather volunteer workers to paint or repair the houses of the poor may qualify, provided that the work would not otherwise be done, i.e. if the recipients of this work are not able to hire a professional or do the work themselves.
  - L'Arche, which relies on people to live full-time in a group home with people who have developmental disabilities; (Workers in the homes are remunerated, but they are committed to taking care of the disabled people on almost a 24-hour basis.)
  - persons who are giving their time to community or religious organizations in a position which would not represent a real employment opportunity for Canadians or permanent residents. (Such work would entail a requirement to be part of, or share the beliefs of, the particular religious community in which they are working.)

The fee exemption code is E02, even if they are being remunerated.

Note: Missionaries who will devote their full time to missionary service for the church or proselytizing may enter pursuant to R186(l). They should be attached to a congregation in Canada and this type of work should be a usual congregational activity. An example of this are Mormon missionaries, sent by the Church of Latter Day Saints.

Note: The difference between a charitable worker (who needs a work permit) and a volunteer (who does not) centres around the definition of "work", and entry into the labour market. A charitable worker is usually taking a full-time position, and may be engaging in a competitive activity; an activity which meets the definition of 'work' even though there may be nominal remuneration (e.g., group home worker, camp counsellor, carpenter for 'Habitat for Humanity'). A 'volunteer' who is not entering the labour market, nor doing an activity which meets the definition of 'work' does not require a work permit.

Work at religious or charitable camps

Camp counsellors and other camp staff who are working at a religious or charitable camp do not require an LMO and may be issued work permits under C50, provided they and their employers meet the criteria above.

5.40 Self-support R206

R206 allows persons who are in Canada in order to seek status as a refugee or protected person to work. They must demonstrate that they cannot otherwise support themselves, but are otherwise eligible for open work permits.

LMO exemption codes:

Refugee claimants: S61, (Fee exempt)

Persons subject to an unenforceable removal order: S62, (Fees apply)

Evidence that the applicant requires public support

The onus is on applicants to prove that they are unable to subsist without public assistance. Officers may accept any evidence that satisfies them that the person meets this requirement. Proof may be, but is not limited to, a letter or cheque stub from the provincial social service department. It is not the intent that refugee claimants apply for social assistance before being issued an employment authorization.

In the absence of letters from social services, bank statements, etc., officers should look at the client history and application forms to determine whether or not they think applicants could support themselves without public assistance. For example, a foreign student making a refugee claim may not meet this criteria because the student was required to provide proof of funds to support the stay in Canada and return home. As well, opportunities already exist in the Regulations to allow students to work (i.e., destitute students, on-campus employment). On the other hand, claimants who entered as visitors with money, but have no one to assist them financially for the remainder of the time it takes to process a claim, would not likely be able to subsist without public assistance.

Officers may consider that this particular eligibility criterion has been met if there is any likelihood that the claimant might require public assistance.

What is the meaning of “unenforceable removal order”?

The following foreign nationals are eligible for a work permit pursuant to R206(b):

- persons who have been issued a removal order that is not in force or that has been stayed;

- persons whose removal orders cannot be enforced as soon as reasonably practicable because they are persons to whom a notification to apply for PRRA pursuant to R160 will be given by the Department. (See ENF 10, Section 15, Removals.). While they are subject to a removal order that is in force, **for the purposes of R206(b), the removal order is still 'unenforceable'**. [This is in keeping with the public commitment made in the Regulatory Impact Analysis Statement. Ref. Canada Gazette Part II, Vol. 136, 2002/06/14 (page 184).]

Note: With the exception of persons described in A112(2), this includes persons who have demonstrated full and timely cooperation, but the Department has been unable to enforce their removal for reasons beyond the control of the applicant (for example, difficulty in obtaining a passport from the government of the foreign national).

Medical results

Refugee claimants are given medical instructions upon making their claim. A work permit may *not* be issued until the officer has received the results of the medical exam for the claimant.

Open work permits may be issued for persons whose results are M1, M2, M3 or M5, along with any occupational restrictions noted by the assessing physician.

Medical results M4 or M6: a work permit must not be issued, as protection of the public health or safety is at issue.

(See Section 9.)

Duration of work permit

The work permit should be valid for a period of 24 months from the date the applicant's claim was forwarded to the IRB. This period is based on an estimate of the time it takes to have a claim considered by the Board. Subsequent renewal periods may be for periods of 12 months, or less, depending on the circumstances of the applicant.

Both initial issuance and extensions of work permits may only be granted if the applicant has demonstrated compliance in pursuing their claim or appeal (i.e., not delayed the procedure through adjournments or no-shows).

For both refugee claimants and persons subject to an unenforceable removal order, the work permit ceases to be valid at the end of the validity period or when all legal *recourses that allow the person to remain in Canada* have been exhausted.

If the applicant is not a genuine temporary resident, R202 applies and the issuance of the work permit does not confer TR status. A statement to this effect should be included in the Remarks section of the work permit.

5.41 Applicants in Canada R207

R207 allows for applicants who have been determined eligible as members of certain in-Canada permanent residence classes and includes protected persons (whether they have applied for permanent resident status or not).

Open work permits may be issued (employment restricted depending on whether medical results have been received.)

LMO Exemption Code: A70

a) members of the live-in-caregiver class who have met the requirements for permanent residence outlined in R113;

b) members of the spousal or common law class, who have satisfied an officer that they meet the requirements of R124;

c) persons upon whom protection has been conferred in accordance with A95(2) (convention refugees, successful PRRA applicants, etc.);

d) H and C: persons for whom an eligibility or admissibility requirement(s) has been waived under A25(1) such that they may become a permanent resident;

e) family members of the above who are in Canada.

5.42 Humanitarian reasons R208

A. Destitute students

LMO Exemption Code: H81

This applies to foreign students who, due to circumstances beyond their control, may find themselves unable to meet the cost of their studies in Canada, be it their day-to-day needs or their tuition. While academic institutions do grant some leeway on obligations such as tuition and residence fees, there may not be a source of relief for the subsistence of students in these circumstances unless they are allowed to work. R208 provides the opportunity for students to cover such difficult financial periods, should on-campus employment provided for under R186(f) prove to be insufficient.

Eligibility

Each case should be considered on its own merit. Some cases will be self-evident such as cases of war, upheaval in home country, collapse of the banking system, etc., while others will require further explanation by the applicant, usually at an interview with an immigration officer.

An open work permit may be issued to coincide with the duration of the current term of study; neither for the duration of the entire program of studies nor for the duration of the study permit.

B. Temporary resident permit (TRP) holders

LMO Exemption Code: H82

This applies to persons who have been issued a TRP to allow them to stay in Canada. If the TRP holder will be in Canada for a long period of time (six months or greater), and they have no other means of support (meaning no family support or other means of meeting their needs) they may be issued a work permit. In the case of permit holders who were refused AFL, and who are waiting to become eligible for permanent residence, officers need not be too rigorous in determining whether applicants need to work because they have no other means of support. The integration of future permanent residents will be assisted by allowing them to work.

An open work permit may be issued that coincides with the validity period of the TRP.

6. Determining the expiry date of work permits relative to dates on LMOs

Note: As of May 19, 2009, HRSDC will no longer be granting LMO extensions; instead, a new LMO application will be required in every case.

This section concerns the date information in CAIPS and FOSS found in:

- the **Employment Validation** screen – (**Offer Valid To** field);
- the **Job Details** screen (**Duration** field); and
- the **Temporary Worker Processing** screen (**Work Permit Valid Until** field).

Procedures:

On the **Employment Validation** screen, the field **Offer Valid To** date is also known as the LMO Expiry Date. This is the date until which the employment offer is valid. Before authorizing a work

permit, visa officers abroad should contact Service Canada to extend the **Offer Valid To** date where the validity date is close to expiry. Border Services Officers (BSOs) must issue the work permits **on or before** the **Offer Valid To** date. If this date has passed, BSOs should contact Service Canada to obtain an extension of the **Offer Valid To** date.

When authorizing the work permit abroad, the visa officer calculates the **Work Permit Valid Until** date from the date the work permit is authorized, for the **Duration** of employment period approved by Service Canada, provided this is not limited by the validity of the passport or other statutory requirements.

Since there can be differences of weeks between the time the visa officer authorizes the work permit abroad and the time the person appears at the POE, the visa officer should include in the **REMARKS** field in the CAIPS **Temporary Worker Processing** screen that the work permit should be issued at the POE for the **Duration** of employment approved by Service Canada, as per the **Job Details** screen.

For example, the visa officer abroad should specify in:
REMARKS: Issue XX month WP from the date of entry.

Note: CBSA officers will **primarily** rely on the remarks to determine the duration of employment upon entry in Canada.

Example of a case:

Abroad

The applicant received an LMO with job **Offer Valid To**: 31-12-2007, for a **Duration** of employment of 24 months. The work permit must be authorized on or before the 31-12-2007. Since the applicant has indicated his intent to start work on December 1st, 2007, the work permit will be authorized for a period of at least 24 months (the **Duration** of employment approved by Service Canada). The visa officer abroad will enter the work permit validity date in the **Work Permit Valid Until** field in the **Temporary Worker screen**, as 30-11-2009.

POE

The applicant arrives at the POE on December 30, 2007, rather than on December 1, 2007 as originally intended. The BSO should then issue the work permit from the date of entry in Canada, for the **Duration** of employment approved by Service Canada (specified in the **Job Details** screen) that is 24 months, until December 30, 2009. The BSO should, accordingly, change the date entered by the visa officer abroad in the **Work Permit Valid Until** field from November 30, 2009 to the new expiry date of December 30, 2009.

7. Processing temporary foreign workers—Documents required with application

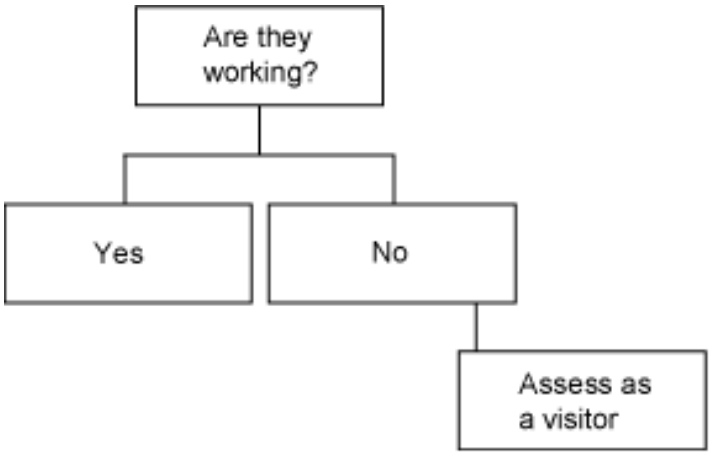
The following documents are required:

1. application form;
2. cost-recovery fee, or HPM receipt (unless fee exempt, see R299 for work permit fee and exemptions)

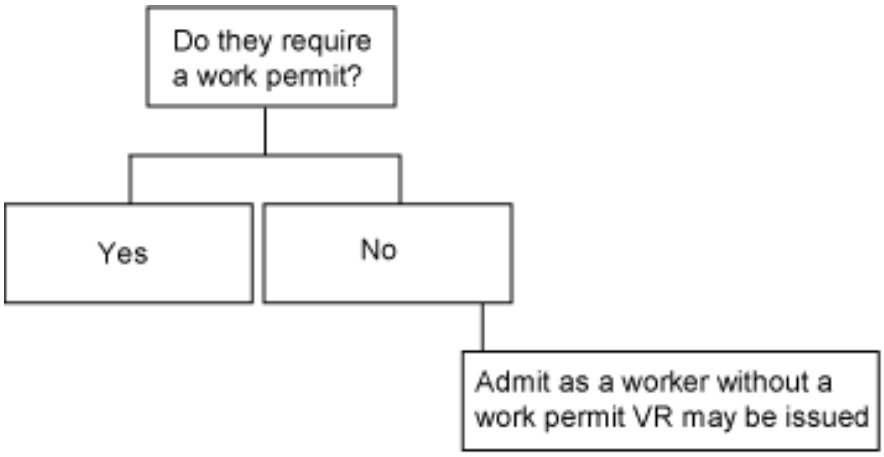
3. evidence that the eligibility criteria of R200(1)(c) are met (examples of such evidence might include job offers or contracts, LMOs, acceptance into a youth exchange program, etc.);
4. background documents showing the qualifications and experience of the applicant for the employment, if such evidence is required to satisfy the requirements of R200(3)(a);
5. proof of identity (With the exception of citizens and permanent residents of the U.S. and residents of St. Pierre and Miquelon, work permits may not be issued for a duration longer than the validity of the passport);
6. a copy of the applicant's current immigration document, if applying within Canada.
7. any other documention required to satisfy the officer that the requirements of the Act or Regulations are met.

8. Procedure: Assessing temporary foreign workers

This flowchart takes officers through the decision making process from determining if the activity is work to what, if any, documentation is required.

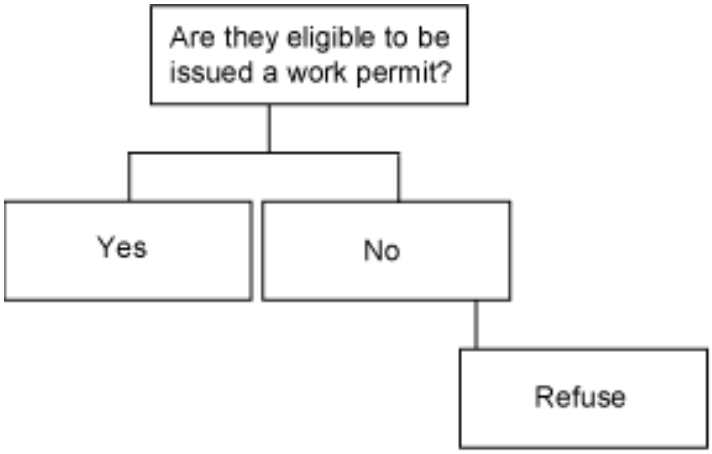


	Are they working?	
Yes **Next question**	Definition of R2 "work" Guidelines in policy section (m.5 overview)	**No** Assess as a temporary resident 1. examination 2. TRV or inland temporary resident manuals



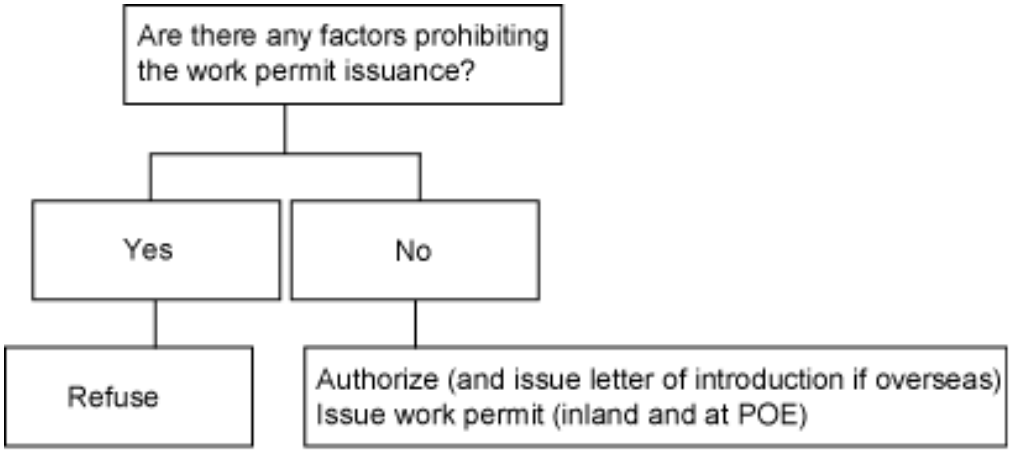
	Do they need a work permit?	
Yes **Next question**	The following persons do not need a work permit: • Business visitor • Foreign Representatives • Family Members of Foreign Representatives • Military Personnel • Foreign government officers • On-campus Employment • Performing Artists • Athletes and Coaches • Public Speakers • Convention Organizers • Clergy • Judges and Referees • Examiners and Evaluators • Expert Witnesses or Investigators • Health Care Students • Civil Aviation Inspector • Accident or Incident Inspector • Crew	**No** Admit as a worker without work permit. VR may be issued R186 NOTE: For long-term temporary residents who may require a Social Insurance Number, the Visitor Record must state that the person is "authorized to work in Canada," or make reference to R186.

	• Emergency service providers • Implied Status	



	Are they eligible to be issued a work permit?	
Yes **Next question**	a) Are they allowed to apply where they did? R200(1)(a) b) Will the foreign national leave Canada after temporary stay? R200(1)(b) c) Is the foreign national eligible for WP issuance? • R203, LMO • R204 to R208, LMO Exempt d) If medical exam is required, has it been performed? R30 Note: **(b) does not apply for S61, S62, nor** A70/Protected persons **Consider special work situations** 1. Airline personnel 2. Camp Counsellors 3. Canada-International FTAs 4. Diplomats 5. Fishing guides 6. GATS 7. International student and young workers exchange programs 8. Military 9. NAFTA	**No** Refuse

	10. *Oceans Act* 11. Performing artists 12. Sales appendiix 13. U.S. government personnel	



	Are there any factors prohibiting work permit issuance? R200(3)	
Yes Refuse	a) Are there reasonable grounds to believe the foreign national cannot perform the work sought (does not apply where open work permits may be issued) [R200(3)(a)]. b) The worker needs a CAQ and does not have one [R200(3)(b)]. c) Would the worker become a strike- breaker by issuance of work permit [R200(3)(c)]? d) If they will be a live-in-caregiver, have they not met the requirements in R112? e) Have they engaged in unauthorized work or study [R200(3)(e)]?	**No** Authorize (and issue letter of introduction if overseas) or issue work permit (inland and at POE). Take into consideration • Need for medical exam; R30 • Need for TRV; (R190)**[see Note below]** • Open (Restricted/ unrestricted) or employer specific (See Section 10 below); • Conditions (including duration) (See Section 11 below)

Note: Correctly coded multiple entry visas should be issued (as long as there is no restriction noted in the IC2), valid for the same period as the work permit or passport, whichever expires first.

Note: It is not necessary to cancel a pre-existing visa in the passport, if the reason for its issuance remains valid (for example, a business person who has a long-term multiple-entry visa, who may also need a short-term work permit).

9. Assessing medical requirements

R30(1) requires that certain temporary foreign workers pass a medical exam before undertaking work in Canada.

The exceptions to this requirement are noted in R30(2).

9.1. Occupations in which protection of the public health is essential R30(1)(b)

Temporary foreign workers intending to work in a field where the protection of public health is essential require a medical examination. A work permit cannot be issued to them until they have passed the immigration medical examination. This applies to the following persons:

- occupations that bring the worker into close contact with people such as:
  - workers in the health services fields (e.g., physicians, physical therapists, massage therapists), including hospital staff and employees, clinical laboratory workers, patient attendants in nursing and geriatric homes, medical students admitted to Canada to attend university, or health care students admitted under R186(p);
  - teachers of primary or secondary schools or other teachers of small children;
  - domestic workers or live-in caregivers;
  - workers who give in-home care to children, the elderly, or the disabled;
  - day nursery employees;

Note: Camp counsellors from non-designated countries were eliminated from this list in May 2002.

- agricultural workers from designated countries. (Please refer to Web site: http://www.cic.gc.ca/english/information/medical/dcl.asp

9.2. Six-month rule R30(1)(c)

Applicants who intend to be in Canada for more than six months, and have resided in a designated country for more than six months within the year preceding their arrival in Canada, are required to undergo a medical examination. The determining factor is not citizenship, but whether the person resided in a designated country in the preceding twelve months. Designated countries are noted at the following address: http://www.cic.gc.ca/english/information/medical/dcl.asp.

9.3. Foreign nationals who are medically inadmissible may be admissible as temporary residents

Not all medical assessment results can be used interchangeably: A foreign national who is medically inadmissible as a permanent resident may be admissible as a temporary resident. The reverse may also be true if the temporary resident's medical condition improves between applications, such as when an active medical condition becomes inactive after treatment.

With some exceptions (noted below), when an applicant changes categories, a medical officer must assess medical examination results for the new category. If the first examination was less than a year earlier, a new examination may not be necessary, as a medical officer may be able to

review the existing results in the new category. Otherwise, officers should issue instructions for a new examination in the new category.

The only exceptions are permanent residence applicants with M1, M2 or M3 profiles and temporary residents with M1 and M2 profiles. They do not need a medical officer to assess their examination results in the new category, provided that the medical assessment is still valid, i.e., within 12 months of the applicant's last immigration medical examination.

Officers must ask a medical officer to review examinations of temporary residents with M3 profiles who apply for permanent residence.

Note: Applicants are responsible for informing officers if they applied before in a different category. This includes applications in Canada for extensions of status. Applicants must state where they applied and include the application file number, if known.

9.4. At the POE

R198(2)(b) states that, in order to apply for a work permit on entry, a person must hold a medical certificate, if they require one.

Temporary workers who have passed immigration medical requirements before arriving at the POE are not required to undergo any further medical examination, unless officers have reason to believe that the person may not be admissible for medical reasons.

Temporary foreign workers who require a medical, or who are from a designated country where medical examinations are required and will be working for more than six months in Canada, must apply for their work permit at a visa office – whether visa-exempt or not – unless valid medical examination results are available at the time of entry.

R198(2)(b) does not apply to foreign nationals who will be working in Canada for less than six months (and are not employed in a designated occupation for which a medical examination is required). However, this provision should not be used to circumvent the requirement to apply for a medical examination at a visa office prior to arrival.

9.5. Conditions related to medical status

If a client falls within a group defined by R30, or where a client requests (and is eligible for) an **unrestricted** open work permit, medical instructions should be issued. An unrestricted open work permit may not be issued until proof is received that medical status is acceptable. The results of the medical examination will dictate whether an applicant may be issued an open work permit that is unrestricted, or one that has an occupational restriction due to health problems. (See Section 10.)

Note: Any restriction (not the client's actual medical condition which led to the restriction) should be noted on the work permit.

9.6. In-Canada extension requests

All temporary residents from designated countries, including foreign workers employed in occupations other than those described in Section 9.1 should be issued normal extensions for the time requested by the client, if approved, with medical instructions. Remarks on the visitor record must indicate "Additional condition: Must undergo immigration medical examination for further extensions to be considered."

No follow-up takes place unless and until the client applies again for a new document. In cases where it is felt appropriate, officers may impose conditions requiring the client to have a medical examination and prove compliance.

When the client has been previously assessed as M-3 and the medical narrative specifies that an update or extension is required, the case must be referred to the Health Management Branch (HMB) for review if the client is requesting an extension and the medical certificate has expired. In these cases:

- officers should send a fax message to the HMB indicating the Client ID, medical file number, date of last immigration medical examination and details about the extension request, particularly the duration of stay requested by the client;
- the file should be held for five working days to allow the HMB to respond to the request ;
- once RHN responds within the five-day time frame, their advice should be followed;
- if no response is received within five days, officers should issue the document and notify their Team Leader of non-response from the HMB.

It is very important that the Medical Report IMM 1017E, indicate if the client has had a previous medical examination for immigration purposes. Officers must check the client history or previous documents and if the person has had a previous medical examination, indicate “yes” in box #18 of the IMM 1017E.

9.7. Medical surveillance

The office (whether CPCV, CIC, POE, or visa office) which requested the medical examination in connection with a temporary resident’s application is, where required, responsible for issuance of the Medical Surveillance Undertaking IMM 0535B.

9.8. Refugee claimants R30(1)(e)

Refugee claimants and the members of their family in Canada must undergo medical examinations before they can work in Canada. See Section 5.41, Self-support R206.

9.9. Medical coding

Medical results are communicated in coded form. The various codes indicate the following results:

M1 : Medical examination passed;
M2 : Medical examination passed; requires in-Canada medical surveillance;
M3 : Conditional pass. May change and, for temporary residents who remain in Canada; needs to be reassessed by health programs one year after first medical exam. Medical results expire one year from the date of the examination;
M4 : Medical examination failed. Public health concerns. No expiry date;
M5 : Medical examination failed. Excessive demand for services. No expiry date;
M6 : Medical examination failed. Public safety concern. No expiry date.

10. Open work permit

An open work permit enables the person to seek and accept employment, and to work for any employer for a specified period of time. An open permit may, however, restrict the occupation or location.

Open work permits should not be issued unless the person concerned may be issued a work permit that is exempt from an LMO.

10.1. Types of open work permits

There are two types of open permits that are presently used: those that are unrestricted, and those that restrict the occupation. Open work permits may be issued with or without occupational restrictions, depending on the applicant's medical status.

Open/unrestricted work permit

- the employer, location and the occupation are unrestricted; NOC coding 9999;
- issued to any eligible applicant who has passed a medical examination for immigration purposes with a result of M1, M2 or M3 (medical exam passed), or to persons who failed the medical examination (M5) but satisfy the criteria of R206 or R207(c) or (d).

Note: Medical surveillance must be imposed for persons assessed as M2/S2. Remarks on the permit should indicate "medical surveillance required".

Open/occupation restricted work permit

- the employer is open (or unspecified), however, an occupation restriction must be specified as the person cannot work in jobs where the protection of the public health is required;
- issued to someone who has *not* completed an immigration medical examination;
- may apply for persons assessed as M3 or M5. The occupation restriction, where applicable, will be stated in the medical narrative (e.g., the physician may note that an epileptic should not be a pilot, work near open machinery or at heights). The restriction, not the actual medical condition, should be noted on the work permit. The restriction must be inserted in the "Remarks" section of the work permit.

Note: Persons assessed as M4 or M6 (risk to public health or safety) are not allowed to work. If the condition is controlled, a new medical examination is required before a work permit may be issued.

Conditions to be imposed for open/occupation restricted work permits

If a medical exam was not completed, one of the following conditions must be used. The specific occupation restriction will depend on whether or not the client has resided in a designated or non-designated country. (Please refer to Web site: http://www.cic.gc.ca/english/visit/dcl.html.)

i) For persons from non-designated countries, the following remark should appear on the work permit:

> "Not authorized to work in: 1) child care, 2) primary or secondary school teaching, 3) health services field occupations."

ii) For persons from designated countries, the following remark should appear on the work permit:

> "Not authorized to work in: 1) child care, 2) primary or secondary school teaching 3) health services field, 4) agricultural occupations."

10.2. Who can be issued an open work permit?

Applicants in the following categories are eligible:

- persons described under R206(a) or (b), exemption code S61 or S62 (see Section 5.41);
- persons described under R207, exemption code A70 (see Section 5.42);
- persons described under R208(a) or (b), exemption code H81 or H82 (see Section 5.43);
- certain workers admitted on a reciprocal basis:
  - Canada World Youth Program participants, exemption code C20 (see Section 5.36);
  - certain international student and young worker exchange programs, C21 (some programs are employer-specific vs. being 'open');

- ♦ family members of foreign representatives and family members of military personnel: LMO exempt, C20, where a reciprocal arrangement exists (see Appendix F and Appendix C);
- ♦ professional athletes admitted on the basis of exemption C20, who require other work to support themselves while playing for a Canadian team (e.g., CFL);

- spouses of skilled workers, eligible under R205(c), C41 (see Section 5.38);
- spouses of foreign students, eligible under R205(c), C42 (see Section 5.38).

If a medical has not been completed, work permits should be open, or open/occupation restricted.

11. Conditions, including validity period

General conditions are imposed on all temporary residents (including workers) by operation of R183. Individual conditions may be imposed by an officer under R185 as follows:

- a period of stay, or validity period of the work permit must be imposed;
- other conditions noted in R185(b) should be imposed depending on whether the work permit should be open or a medical examination has been completed (as per the instructions in Section 9 and Section 10).

11.1. What should the validity period be?

In general, the longer the duration of temporary stay, the greater the onus will be on the individual to provide evidence of temporary purpose at the time an application for a work permit or extension is made.

Circumstances to be considered include the following:

- Passport Validity under R52(1); officers cannot issue a work permit or grant status as a temporary worker beyond the validity of the passport. Exceptions to this are noted in R52(2). An additional exception applies for work permits issued to those who may not have status as a temporary resident R202.

Note: All other criteria noted below are subject to passport validity, unless (like U.S. nationals) they are excepted.

- LMO (subject to passport validity, officers should issue the work permit for the complete duration of the LMO taking into account CAQ validity where applicable);
- expected duration of employment in the job offer;
- maximum time allowed by any particular program or agreement in which the client is participating. (Some programs or agreements may limit the length of initial issuance, extensions or total length of employment in Canada. See Section 11.2.)

Providing requirements are met, officers should issue work permits for a longer rather than shorter duration. Where there is no reason to limit duration, officers should issue a work permit for the complete expected duration of the employment. It is in the Department's and the client's interest to lengthen the periods between times when clients require service, i.e. allowing a person to work, without having to submit renewal applications unnecessarily frequently, saves both the client's time and money, and the department's resources.

Note: If a TRV is necessary, it should be of the same duration as the work permit (or passport, if it will expire first) and it should allow for multiple entries, provided there are no restrictions noted in IC 2.

11.2. Categories of work with validity periods which may not be exceeded

Includes updates from OB 85.

Category	Validity period	Notes

Professionals	NAFTA (R204(a), exemption T23): Work permits may be issued for three years, with renewals by three-year increments. Other FTAs similar to the NAFTA: (R204(a), exemption T23): Work permits may be issued for one year, with renewals by one-year increments. GATS (R204(a), exemption T33): 90-day limit per 12- month period.	
Intra-company transferees	NAFTA (and other FTAs similar to the NAFTA) (R204(a), exemption T24), General Provisions under IRPA and GATS R205(a), (exemption C12): Work permits may be issued for the following periods: • Executives and managers: max. 3 years, unless opening an office (1-year); 2-year renewals allowable; total period of stay may not exceed 7 years; * • Specialized knowledge transferees: max. 3 years, unless opening an office (1-year); 2-year renewals allowable; total period of stay may not exceed 5 years. *	* For these cases, a minimum period of one year must pass after the time cap (max. total period of stay) before applicants are eligible to be issued a new work permit in these categories.
International Youth Exchange Programs	R205(b), exemption C21. Most programs are 6 months or 1 year. See the table in Appendix E.	
Study permit holders	Work permits issued under R205(c)(i), C30, where the work is essential to the study program, should not exceed the validity date of the study permit.	
Spousal employment provisions	Work permits issued under R205(c)(ii) exemption C41 or C42 (or under R205(b), C20 in the case of spouses of military personnel or diplomats) should not exceed the duration of the principal applicant's stay in Canada.	
Post-graduate employment	R205(c)(ii), exemption C43 – Can be used only once; total employment up to a maximum of three years. (See OP 12 for details)	
Live-In Caregiver Program	The maximum validity of the work permit (and the maximum to which it can be extended under this program) is 3 years plus (+) 3 months.	Refer to OP 14, Section 5.10 for details
Refugee claimants, etc.	For work permits issued under R206, exemption S61 or S62, initial validity is 24 months, and renewals may be issued for one-year periods.	
Destitute students	R208, exemption H81, a work permit should be issued only to allow the study permit holder to complete their term.	
TRP holders	To be issued a work permit under R208, exemption H82, the temporary resident permit must be valid for a minimum of six months. The validity date of the work permit should not exceed the validity of the TRP.	
Special category countries	In most cases, foreign workers from these countries may be issued work permits beyond a one-year validity. See Appendix A of IC 2.	

12. Quebec program

12.1. Canada-Quebec Accord

Under the terms of Article 22 of the *Canada-Québec Accord*, Québec's consent is required in order to grant admission to temporary foreign workers subject to LMO requirements.

Workers admitted to Québec require Québec's consent through the issuance of a "Certificat d'acceptation" (CAQ) in cases where the employment requires an opinion from LMO, and in cases of live-in caregivers who change employers and obtain new LMOs. No CAQ is required where the employment is LMO exempt.

12.2. Joint undertaking on temporary foreign workers

Under the terms of Section V.19 of the Accord, Canada undertakes to consult Québec on the identification of categories of temporary foreign workers who are exempt from HRSDC's labour market opinion, and to advise Québec of these categories as well as any changes which Canada intends to make to such categories.

Under the terms of Section V.20, Québec shall be responsible for:

a) determining jointly with Canada whether there is a Canadian citizen or permanent resident available to fill the position offered to the temporary worker;

b) providing prior consent for the granting of entry to any temporary foreign worker whose admission is governed by the requirements concerning the availability of Canadian workers.

12.3. CAQ requirement

Foreign nationals destined to work in Québec do not require a CAQ if they are:

- LMO exempt, or
- working for a period of five days or less (not necessarily consecutive days).

The CAQ is issued by the "Ministère d'Immigration et des Communautés culturelles du Québec (MICC)".

12.4. Issuance of CAQs

Procedures are in place to ensure the exchange of documentation between Canada and Québec where confirmation is required. An approval from Service Canada presented by an applicant destined to Québec has already been cleared with the Québec authorities and thus includes an approval from the province for the issuance of a CAQ.

12.5. Joint confirmation procedures

Joint procedures can be summarized as follows:

1. an employer wishing to hire a temporary foreign worker submits the application form to the Service Canada, describing the nature of the employment and the skills required to perform the work;
2. an employer who first submits an application to the MICC is advised by Québec to submit the request to Service Canada;
3. after assessing the request, Service Canada sends the application and any background information to MICC indicating its intention to accept or refuse;
4. within ten days, MICC indicates its intention to accept or refuse to Service Canada, documenting its decision with background information, as necessary;
5. if either Canada or Québec can demonstrate that the employment will have a negative labour market effect, the employer's request is refused;

6. if both Canada and Québec agree that the employment can only be filled with a temporary foreign worker, the application is approved;
7. Service Canada sends the employer a letter confirming the decision to approve the application. The employer informs the potential employee who then contacts the processing office indicated in the letter of approval;
8. Service Canada confirms the approval with the appropriate visa or immigration office.

Note: In order to extend a CAQ, a job offer must be re-confirmed.

A CAQ may be valid for a maximum of 36 months. For occupations that have an Education/Training Factor (ETF) of less than 5, the CAQ may be valid for a maximum of 14 months.

12.6. Countries served by MICC

The “Service d’Immigration du Québec” has offices throughout the world. A list is available at http:/ /www.immigration-quebec.gouv.qc.ca/anglais/index.html.

13. More guidelines for unique situations

13.1. Airline personnel

There are provisions contained in the 1944 *Convention on International Civil Aviation* which allow for the largely unrestricted and expeditious entry of foreign air carrier personnel to the extent that such personnel is necessary to perform supervisory and technical duties connected with the operation of international air services. The agreement also embodies an element of reciprocity.

As outlined below, different requirements apply to flight crews, operational technical and ground personnel, and station managers:

- **flight crews** are exempt from work permits pursuant to R186(s);
- **operational, technical and ground personnel** of foreign commercial airlines require work permits, but are LMO exempt under R204, T11;
- **station managers** require a work permit but are exempt from an LMO under R205(a), C12, provided they meet the guidelines for intra-company transferees;
- foreign airline security guards (e.g., El Al):
  - on aircraft: considered members of the crew, work permit exempt R186(s);
  - at the airport: Those security guards stationed in the airports and who are responsible for checking passengers and their luggage before they board the aircraft require a work permit, but are exempt from an LMO pursuant to R205(a), C10.

13.2. Camp counsellors

Includes updates from OB 64.

Counsellors at day or residential camps require LMOs for work permits. However, camp counsellors who are working in a volunteer capacity may be issued work permits pursuant to R205(d), C50 *provided they, their activities and their employers meet the criteria noted in the guidelines*. C50 work permits are fee exempt. Individuals do not require a high school diploma. The NOC Code is 5254.

SWAP and other Working Holiday Program participants may work at summer camps.

See Section 5.39 for counsellors working at religious or charitable camps.

Note: Canada Revenue Agency has a list of all Canadian charities in good standing available through their Web site at http://www.cra-arc.gc.ca/tx/chrts/menu-eng.html. It is not sufficient for the foreign national to be simply working without payment for a CRA registered charity in order to be considered a charitable worker and exempt from the LMO requirement. The activities they are performing for the registered charity must also not be competing directly with Canadian citizens or Permanent Residents in the Canadian labour market.

Medical examinations for camp counsellors

Historically, **all** persons applying to enter Canada as camp counsellors have been required to undergo an immigration medical examination. However, as of May 2002, only potential camp counsellors who have resided in a designated country for six consecutive months, at any time during the one-year period immediately preceding the date of seeking entry or the application, will be required to undergo an immigration medical examination. This means that counsellors who have been living in the United States will not have to undergo an immigration medical exam before issuance of a work permit.

The designated country list is available at http://www.cic.gc.ca/english/information/medical/dcl.asp

13.3. Camp counsellors in training

Camp counsellors in training (CITs) do not require work permits. They may pay a fee to attend camp as other campers; however, they are there, at least in part, to receive training during their stay with the intention of becoming a camp counsellor the following year.

Camp counsellors in training occasionally assist camp counsellors in their duties. They do not have any of the responsibilities of a camp counsellor and are under constant supervision by a camp counsellor. They do not meet the definition of “work” in the Regulations.

13.4. Foreign camp owner or director

For a camp owner, director or their spouse, a work permit is required, but they are exempt from an LMO pursuant to R205(a), C11.

Other members of the foreign owner’s family, should they wish to be employed by the camp, will be subject to the LMO requirement as per the guidelines for R205(a), C11 in Section 5.30.

The above guidelines apply whether the camp is a children's recreational facility or a hunting or fishing camp.

13.5. Fishing guides

Cross-border employment of fishing guides has been an issue in the past, and in 1993 a joint working group of Canadian and U.S. immigration officials agreed that border lake issues should be dealt with in a spirit of facilitation.

This working group reached an agreement that recognized the legitimate nature of each country's labour certification process (confirmation) for fishing guides who want to operate in the other country. The temporary entry provisions of NAFTA do not apply to fishing or hunting guides. Both countries nevertheless agreed that there should be an effort to facilitate the movement of such guides by establishing rosters on each side that would identify vacancies. Due to the complexity and the resources required to implement the reciprocal roster system, it was never put into place. Instead Canada operates the following mechanisms:

- **Border lakes:** For fishing guides working on lakes which straddle the Canada - U.S. border, officers may issue seasonal work permits which are LMO exempt pursuant to R205(b), C20. This LMO exemption is based on the principle (and fact) that Canadian fishing guides are

accorded a similar privilege to work on the U.S. side of a border lake. Seasonal work permits, specifying day use only, may be issued for guiding U.S. residents or persons staying at a U.S. facility.

- **Canadian employers:** U.S. fishing guides working for a Canadian employer (such as a resort) require an LMO for a work permit.

- **Canadian lakes:** A U.S. fishing guide who wishes to work on a lake which is fully inside the Canadian border requires an LMO for a work permit. For those guides who are self-employed (where there is no employer on either side), officers may issue an LMO-exempt work permit if the guide can demonstrate that the requirements of R205(a), C11 are met. Fishing guides must be able to demonstrate that their activities attract tourism or benefit Canadian citizens or permanent residents.

Consistent with the privilege of free navigation in the *Boundary Water Treaty*, American guides who cross the Canadian boundary line to get to a U.S. fishing destination are not required to report for examination by Canadian POE officials. U.S. fishing guides possessing an Ontario fishing licence, and fishing well across the boundary line within Canada, would *not* be considered to be incidentally in Canada, and do require a work permit. (See Border lakes, above.)

13.6. *Oceans Act*

Canada's territorial limit extends 12 miles from all Canadian ocean shorelines and within this limit normal immigration requirements apply. Within the 12 to 200 mile Exclusive Economic Zone (EEZ) of Canada, work permits are also required for temporary workers hired aboard any marine installation or structure (and its safety zone) that is anchored or attached to the continental shelf or seabed in connection with its exploration or the exploitation of its mineral or non-living resources. This includes any artificial island constructed, erected or placed on the continental shelf. This does **not** include vessels operating past the 12-mile territorial limit that are not "attached to" or the property of an artificial island, or anchored to the seabed.

See the following table for definitions that pertain to the *Oceans Act*.

Artificial island	Any man-made extension of the seabed or a seabed feature, whether or not the extension breaks the surface of the superjacent waters
Continental shelf	The seabed and subsoil of those submarine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of 200 nautical miles from the inner limits of the territorial sea, whichever is the greater, or that extend to such other limits as are prescribed the *Oceans Act.*
Marine installation or structure	Any ship, offshore drilling unit, production platform, sub-sea installation, pumping station, living accommodation, storage structure, loading or landing platform, floating crane, pipe-laying or other barge or pipeline and any anchor, anchor cable or rig pad in connection therewith, and any other work within a class of works prescribed in the *Oceans Act*.

Temporary foreign workers need an LMO for a work permit if they are employed in any of the following locations:

- aboard any marine installation or structure attached or anchored to the continental shelf:
  - in connection with the exploration of that shelf; or
  - in connection with the exploitation of its mineral or other non-living resources;

- on or under any artificial island constructed, erected or placed on the continental shelf or seabed, for examples:
  - temporary foreign workers employed on drill ships or drill platforms that are anchored to the continental shelf for the purpose of searching for oil;
  - gravity based structure (GBS) production platforms used to extract crude oil within the 200- mile economic zone limit or the edge of the continental shelf.

13.7. United States government personnel

Work permit required. LMO exempt under R204, T11.

Official U.S. government personnel assigned to temporary postings in Canada may include officers of the U.S. Citizenship and Immigration Services (USCIS) and U.S. Customs and Border Protection (CBP), members of the International Joint Commission, U.S. grain inspectors and others.

U.S. pre-clearance officers working in Canada are not accredited.

The work permit case code is 20 - Worker, N.E.S. Officers should not use code 22 - official status.

U.S. government personnel arriving in Canada for the first time will be issued a work permit, on presentation of a “letter of introduction” from the appropriate agency identifying the assignment, its location and the number of years the employee will be assigned in Canada. Long-term work permits may be issued for the duration of the assignment. They are fee exempt pursuant to R299(2)(j). The occupational codes will be entered as follows:

- Supervisory Staff NOC 1228
- USCIS Inspectors NOC 1228
- U.S. Customs Inspectors NOC 1228
- U.S. Grain Inspectors NOC 2222
- International Joint Commission and others NOC 2263

CIC does not wish to restrict management of the U.S. Government agencies concerned from assigning staff to other locations in Canada for temporary duty. For this reason, officers should use the following terms and conditions. U.S. Government employees are:

- prohibited from attending any educational institution and taking any academic, professional or vocational training course, unless authorized;
- not authorized to work in any occupation other than stated; and
- not authorized to work for any employer other than stated.

Notation to be included on the work permit: If transferred to another location on a permanent basis, a new work permit will be required for the new location.

Family members

Work permit required, Case Type 20, but LMO exempt under R205(b), C20.

Pursuant to the reciprocal agreement between the United States and Canada, eligible family members may obtain work permits subject to medical requirements where the protection of public health is essential.

Family members are eligible for open/unrestricted work permits where medical requirements have been met. The expiry date should coincide with the U.S. Government employee’s term of duty. They are exempt from cost recovery under Code E03.

Note: A U.S. Government official seeking short-term entry for the purposes of performing duties and providing services for the U.S. Government in Canada may enter as a business visitor if the criteria are met.

U.S. Internal Revenue Service (IRS) employees

Work permit required, but LMO exempt pursuant to R204, T11.

IRS employees will periodically enter Canada to audit, collect and do criminal investigations. IRS representatives require a work permit, but are LMO exempt as they will be engaging in employment pursuant to an agreement entered into with a foreign country by or on behalf of the Government of Canada. They may be issued a one-year work permit.

Appendix A Artistic/Performing Arts

Actors, Artists, Technicians, and similar workers in Film, Television, Theatre & Radio

The following list is not all-inclusive, but only provides examples of occupations subject to an LMO for work permits in the film and television industry:

- screen and television actors, unless part of a group making a motion picture under intergovernmental co-production;
- artists involved in taped television dramatic productions and live dramatic performances that are being filmed;
- technicians working in film theatre and television productions, unless they meet the requirements of R186(g);
- persons coming to do dubbing work in films;
- persons coming to make either a film, videotape or sound recording for use in advertising commercials;
- persons coming to participate in making a motion picture, documentary, no matter who finances the project;
- persons temporarily occupying a permanent position at a permanent performing arts organization (i.e., those not considered to be *guest* artists).

Adjudicators, Artistic Field

Adjudicators at music and dance festivals do not require work permits pursuant to R186(m).

American Federation of Musicians (A F of M)

Musicians working under the Cultural Exchange Program between the Canadian and American components of the American Federation of Musicians (A F of M) do not have to obtain an LMO if they are members of the Federation and citizens of the United States. They must possess a letter from the Canadian office of the A F of M identifying them as participants in the cultural exchange program, and indicating that it would be appropriate for them to work in Canada provided they meet the usual requirements of a temporary resident.

To reflect the duration of the J-1 visa given to Canadians by the United States, the work permit may be issued for a maximum of three months from the original date of entry. All occupations are coded NOC 5133, Musicians and Singers. In situations where the requirements of R186(g) are met, no work permit is required.

Criteria

A work permit may be required, but an LMO is not required pursuant to R205(b), C20.

“Bar, restaurant or similar establishment” referred to in R186(g)(ii)

A performance in a bar, restaurant or similar establishment (see examples below) requires a work permit and an LMO. Officers must use their best judgement, and consultation with HRSDC is strongly encouraged. However, for the purpose of determining whether a venue is a bar, restaurant or similar establishment, officers may consider the following indicators:

A bar, restaurant or similar establishment

- hires performers primarily to attract customers who will purchase food and drinks. The primary function of the business is the sale of food and/or beverages;
- may require a cover charge or sell advance tickets for a particular performance;
- is open to serve patrons both before the performance and afterwards.

A “bar, restaurant or similar establishment" may offer live, non-live, or a combination of live and non-live entertainment to its patrons. Non-live entertainment normally includes the work of a disc jockey, but exceptions may be made for 'star' performing DJs. A venue may still be considered a "bar, restaurant or similar establishment" even though it primarily offers live entertainment, occasionally offering a non-live entertainment event (for example, a band or other artist performs every night in a club, but one night a week it operates with a DJ as a dance club). Examining the liquor licence can provide an objective assessment of whether a place should be considered a "bar, restaurant or similar establishment", or whether it can be considered just a concert venue (and thus, exempt from the work permit requirement).

In situations where the classification of a venue is unclear, officers may look to the *liquor licence* of the establishment in order to discern the appropriate classification of the business. Information concerning the nature of the venue will be found **within** the licence document. Note that the nature of the venue is not necessarily reflected in the type of licence assigned to the venue. For example, a venue may be identified within the licence as operating as a concert venue, but possess a "Liquor Primary Licence of bars and pubs". In this case, the venue would still be considered a concert venue and not a "bar, restaurant or similar establishment" for the purposes of R186(g)(ii).

In situations where an establishment has no liquor licence and the classification of an establishment is unclear, officers are advised to look at the *municipal operating licence* of the establishment, in order to discern its appropriate classification.

There may be situations where a venue that would normally be considered a "bar, restaurant or similar establishment" may be considered a concert venue for a particular performance. For example, a local music or cultural association "rents" or "leases" a "club" on a night that the venue would not normally open, as a venue for the performance of a specific performer or group it has contracted with. Tickets are sold for that event (e.g., "The Moroccan Cultural Association presents **Sam** at Rick's Café" as opposed to "Rick's Café presents **Sam**"), and the venue opens and closes shortly before and after the performance (i.e., the operation of the business is tied directly to the performance). Even though the operators of the venue conduct their normal food and drinks business for the patronage of those attending the event, this may be considered a "concert" situation which warrants R186(g) work permit exemption.

Note: Officers can request to see a copy of the licence, but it is the responsibility of the employer to establish that a venue is not a "bar, restaurant or similar establishment", if they wish to bring performers in under R186(g).

Examples of "bar, restaurant or similar establishment": NOT exempt under R186(g)(ii)

- Bars
- Beer parlours
- Bistros
- Cabarets*
- Cafes
- Cafeterias
- Coffee shops
- Lounges
- Nightclubs
- Pubs
- Restaurant
- Tapas bars
- Taverns
- Tea houses

* A cabaret is defined as an establishment that offers both live and non-live entertainment

Examples of venues NOT considered to be a "bar, restaurant or similar establishment": Exempt under R186(g)(ii)

- Auditoriums
- Banquet halls
- Bingo establishments
- Casinos (provided that the entertainer is not performing in a bar or restaurant located within the Casino)
- Comedy clubs*
- Community centres
- Concert venues
- Convention centres
- Dinner theatre establishments*
- Hotels (provided that the entertainer is not performing in a bar or restaurant located within the hotel)
- Legions
- Public parks
- Religious establishments (such as churches, temples and mosques)
- Shopping malls
- Sports arenas
- Theatres

*Comedy clubs and dinner theatres are not considered to be a bar, restaurant or similar establishment, since their primary business function is the sale of live entertainment, and not food and/or beverages

Buskers

Buskers include street performers or people performing at street festivals. In most cases they should meet the requirements of R186(g).

Circus performers

Foreign travelling circus performers should, in most cases, meet the requirements of R186(g). However, in cases where the employer is Canadian, there is entry into the Canadian labour market, and an LMO is required.

Exception: Cirque de Soleil has demonstrated the significant benefit they bring to the local economy and have demonstrated that they look to find the best circus performers in the world. Therefore, foreign performers may be admitted under R205, C10.

Conductors

Conductors include orchestra leaders, or people coming to conduct various concerts. If the conductor will be hired on a full-time basis by a Canadian orchestra, a work permit and an LMO is required. If they are a guest conductor, coming for just one or a few concerts, the conductor may work without a permit pursuant to R186(g).

Festivals

Most jazz, folk, blues (etc.) festivals in Canada take place in the summer months and the performances are held outside. R186(g) clearly applies in these cases. However some performances which are part of the same festival do take place in bars. If festival performers are being paid by the festival organization and not by the bar or restaurant, it would be reasonable to apply R186(g), thus interpreting the bar as merely a concert venue. A flexible interpretation allows all of the festival performers to be treated in the same way.

To verify that the performance taking place within a bar, restaurant or similar establishment is part of a festival, the performing artist's contract must be between the foreign worker and the festival organization. If the contract is between the worker and a party other than the festival, such as the owner of the bar or restaurant, the performing artist requires a work permit.

Also applicable are showcase events, similar to festivals, where the performers are not paid at all but, in fact, pay to be part of the festival (e.g., Toronto's North by Northeast Festival and Canadian Music Festival). These are events where the performers attend seminars and also have an opportunity to demonstrate to promoters and record industry executives how they perform in a live setting and what audience reaction they generate. The live settings are various bars that have agreed to participate in the showcase event. There is no payment by the bar owners for the performances.

Film Co-producers

All temporary foreign workers entering Canada to take employment under the terms of a film co-production agreement between Canada and any foreign country are exempt from the need for an LMO. The temporary foreign worker must present a letter issued by the Canadian co-producer confirming that a co-production agreement has been signed and specifying what role the temporary foreign worker will fill in the production. The worker should also present a copy of their contract with the Canadian or foreign co-producer. Telefilm Canada plays a role in approving co-production agreements, and is available to confirm that an agreement exists, should this be necessary. (Telefilm Canada 1-800-567-0890, www.telefilm.gc.ca)

Criteria:

Work permit required but LMO exempt under R204, T11.

Film producers employed by foreign companies

Persons employed as producers by foreign film or television companies coming to produce a film or documentary entirely funded from abroad are exempt from work permits as persons who meet the criteria of a business visitor under R187.

Film & recording studio users

Individuals and groups who purchase services or rent equipment furnished by recording and film studios in Canada may be admitted without work permits if they meet the criteria of R187.

Guest artists coming to perform on Canadian television or radio

A strict reading of R186(g) might lead an officer to conclude that this Regulation does not apply and that work permits and LMOs are required in this situation. However, another interpretation is possible which better reflects CIC's policy intent: The musical guest artist, who is coming to perform on, for example, 'Open Mike', with Mike Bullard, or Canada AM, is primarily a guest artist. Although the show will be broadcast, the musician does not have a stake in it, nor are they really integral to the show. They are just a guest in this instance, and even though singing, should be admitted without a work permit in the same way they would if they were just talking on the show. Alternatively, if they were coming to act or sing a regular part in a Canadian television series, they require a work permit and LMO.

Permanent positions in performing arts venues

Persons coming temporarily to occupy permanent positions as members of permanent organizations such as theatres, dance groups, orchestras, house bands, etc., are required to hold work permits and LMOs. This includes persons coming as choreographers and announcers.

World Wrestling Entertainment (WWE)

These performers and their accompanying essential crew may be admitted pursuant to R186(g) which includes a stipulation that the performance not be "primarily for a film production or television or radio broadcast". While most of their staged performances are broadcast live in a pay-per-view format and/or filmed for later commercial broadcast, this is not considered to be the primary purpose of the performance.

A substantial portion of the WWE's revenues from live events does stem from simultaneous or subsequent broadcast and film. However, a substantial portion is also received from ticket sales to the live events. Furthermore, if the primary intent of these performances were not to attract and entertain a live audience, then there would be no reason for the WWE to undertake the expense and inconvenience of offering a touring performance.

Note: The R186(g) exemption does not apply to any WWE workers directly involved in the film, television or radio broadcast elements of the production. This includes all WWE camera operating positions.

Appendix B International Free Trade Agreements (FTAs)

Updates from OB 124 included.

International FTAs cover trade in goods, services and investments. The agreements are modeled on the NAFTA Chapter 16 (see Appendix G). Like the NAFTA, the agreements contain provisions to facilitate, on a reciprocal basis, temporary entry for business persons, but allow each party to impose or continue to impose a visa on the citizens of the other party.

The FTAs in this appendix contain provisions similar to the NAFTA to grant temporary entry to four categories of business persons - Business Visitors, Professionals, Intra-company Transferees and Traders and Investors; differences are highlighted as they relate to Appendix G of this manual.

Exemption codes are applied as follows:

Business Visitor	N/A
Trader	T21
Investor	T22
Professional	T23
Intra-company Transferee	T24

Reference

Section	Free Trade Agreement
1 [link]	Canada-Chile (CCFTA)
2 [link]	Canada-Peru

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1. CANADA-CHILE FREE TRADE AGREEMENT (CCFTA)

Background

The basic NAFTA provisions remain the same in the CCFTA and are set out in Chapter K of the agreement.

There are, however, a number of minor differences, primarily in the appendices which support two of the categories of business persons - Business Visitors and Professionals.

The rules for Intra-company transferrees and Traders/Investors are the same.

Differences from Appendix G (NAFTA)

Business Visitors:
Like the NAFTA, Appendix K-03.I.1 of the CCFTA, which supports the Business Visitor category, does not provide an exhaustive list but illustrates the types of activities usually carried out by Business Visitors. No new activities were added to Appendix K-03.I.1 when compared to NAFTA,

but **the following activities were removed** to reflect the bilateral agreement between Canada and Chile:

- harvester owners - under Growth, Manufacture and Production;
- transportation operators - under Distribution;
- Canadian and American brokers performing brokerage duties - under Distribution; and
- tour bus operators - under General Service.

Professionals:
Professionals identified in Appendix K-03.IV.1 of the CCFTA (below) seek entry through pre-arrangement – as a salaried employee under a personal contract with a Canadian employer or through a contract with the professional's employer in their home country. Like the NAFTA list of Professionals in Appendix G of this manual, over 60 professionals are identified in the CCFTA list. Unlike Appendix K03.I.1 (Business Visitor), **Appendix K-03.IV.1 below contains an exhaustive list of professionals and cannot be interpreted.**

Each professional identified in the Appendix must hold the qualifications indicated in the Minimum Educational Requirements and Alternative Credentials applicable to the profession. **No new profession was added to the Appendix of the CCFTA.**

The requirements applicable to NAFTA professionals were retained and continue to apply for the Chilean professions. However, for 14 of the professions, Chilean minimum education requirements and alternative credentials, such as the Chilean University Title, were added as alternatives to the requirements which are set out in NAFTA, in order to reflect the Chilean educational system.

Changes were made to the minimum education requirements and alternative credentials for the following professions : Accountant, Lawyer, Librarian, Social Worker, Dietitian, Nutritionist, Occupational Therapist, Physician, Physiotherapist, Registered Nurse, Veterinarian and Geologist. See Appendix K-03.IV.1 of the CCFTA below.

Note: The CCFTA list of professionals compares to the General Agreement on Trade in Services (GATS) for the following professions: architect, engineer, forester, land surveyor, lawyer and urban planner. (See Appendix D for more information.)

Appendix K-03.IV.1

PROFESSIONALS

PROFESSION[1]	**MINIMUM EDUCATION REQUIREMENTS AND ALTERNATIVE CREDENTIALS**[2]
General	
Accountant	Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A. or C.M.A; or Contador auditor or Contador público (University Title)[3].
Architect	Baccalaureate or Licenciatura Degree; or state/provincial licence[4]
Computer Systems Analyst	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma[5] or Post-Secondary Certificate[6], and three years experience
Disaster Relief Insurance Claims Adjuster (claims adjuster	Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years

employed by an insurance company located in the territory of a Party, or an independent claims adjuster)	experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims
Economist (including Commercial Engineer in Chile)	Baccalaureate or Licenciatura Degree
Engineer	Baccalaureate or Licenciatura Degree; or state/provincial licence
Forester	Baccalaureate or Licenciatura Degree; or state/provincial licence
Graphic Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Hotel Manager	Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post-Secondary Diploma or Post-Secondary Certificate in hotel/restaurant management, and three years experience in hotel/restaurant management
Industrial Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Interior Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Land Surveyor	Baccalaureate or Licenciatura Degree; or state/provincial/ national licence
Landscape Architect	Baccalaureate or Licenciatura Degree
Lawyer (including Notary in the Prov ince of Quebec)	LL.B., J.D., LL.L., B.C.L. or Licenciatura Degree (five years) or Abogado, or membership in a state/provincial bar
Librarian	M.L.S. or B.L.S. or Magister en Bibliotecología (for which another Baccalaureate or Licenciatura Degree was a prerequisite)
Management Consultant	Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of speciality related to the consulting agreement
Mathematician (including Statistician)	Baccalaureate or Licenciatura Degree
Range Manager/Range Conservationalist	Baccalaureate or Licenciatura Degree
Research Assistant (working in a post-secondary educational institution)	Baccalaureate or Licenciatura Degree
Scientific Technician/ Technologist[7]	Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research
Social Worker	Baccalaureate or Licenciatura Degree or Asistente Social/ Trabajador social (University Title)
Sylviculturist (including Forestry Specialist)	Baccalaureate or Licenciatura Degree

Technical Publications Writer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Urban Planner (including Geographer)	Baccalaureate or Licenciatura Degree
Vocational Counsellor	Baccalaureate or Licenciatura Degree
Medical/Allied Professional	
Dentist	D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental or Licenciatura en Odontologia; or state/provincial licence
Dietitian	Baccalaureate or Licenciatura Degree or Dietista Nutricional (University Title); or state/provincial licence
Medical Laboratory Technologist (Canada)/ Medical Technologist (Chile, Mexico and the United States of America)[8]	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Nutritionist	Baccalaureate or Licenciatura Degree or Nutricionista/Dietista Nutricional (University Title)
Occupational Therapist	Baccalaureate or Licenciatura Degree or Terapeuta Ocupacional (University Title); or state/provincial licence
Pharmacist	Baccalaureate or Licenciatura Degree; or state/provincial licence
Physician (teaching or research only)	M.D. or Doctor en Medicina or Médico Cirujano/Médico (University Title); or state/provincial licence
Physiotherapist/Physical Therapist	Baccalaureate or Licenciatura Degree or Kinesiólogo/ Kinesioterapeuta (University Title) ; or state/provincial licence
Psychologist	State/provincial licence; or Licenciatura Degree
Recreational Therapist	Baccalaureate or Licenciatura Degree
Registered Nurse	State/provincial licence, or Licenciatura Degree, or Enfermera (University Title)
Veterinarian	D.V.M., D.M.V. or Doctor en Veterinaria or Médico Vet erinario (University Title); or state/provincial licence
Scientist	
Agriculturist (including Agronomist)	Baccalaureate or Licenciatura Degree
Animal Breeder	Baccalaureate or Licenciatura Degree
Animal Scientist	Baccalaureate or Licenciatura Degree
Apiculturist	Baccalaureate or Licenciatura Degree
Astronomer	Baccalaureate or Licenciatura Degree
Biochemist	Baccalaureate or Licenciatura Degree
Biologist	Baccalaureate or Licenciatura Degree
Chemist	Baccalaureate or Licenciatura Degree
Dairy Scientist	Baccalaureate or Licenciatura Degree
Entomologist	Baccalaureate or Licenciatura Degree
Epidemiologist	Baccalaureate or Licenciatura Degree
Geneticist	Baccalaureate or Licenciatura Degree
Geologist	Baccalaureate or Licenciatura Degree or Geólogo (University Title)
Geochemist	Baccalaureate or Licenciatura Degree
Geophysicist (including Oceanographer in Mexico and the United States of America)	Baccalaureate or Licenciatura Degree
Horticulturist	Baccalaureate or Licenciatura Degree

Meteorologist	Baccalaureate or Licenciatura Degree
Pharmacologist	Baccalaureate or Licenciatura Degree
Physicist (including Oceanographer in Canada and Chile)	Baccalaureate or Licenciatura Degree for Physicist; Oceanógrafo (University Title) for Oceanographer
Plant Breeder	Baccalaureate or Licenciatura Degree
Poultry Scientist	Baccalaureate or Licenciatura Degree
Soil Scientist	Baccalaureate or Licenciatura Degree
Zoologist	Baccalaureate or Licenciatura Degree
Teacher	
College	Baccalaureate or Licenciatura Degree
Seminary	Baccalaureate or Licenciatura Degree
University	Baccalaureate or Licenciatura Degree

NOTES

1. A business person seeking temporary entry under this Appendix may also perform training functions relating to the profession, including conducting seminars.

2. Accountant: C.P.A.: Certified Public Accountant; C.A.: Chartered Accountant; C.G.A: Certified General Accountant; C.M.A.: Certified Management Accountant

Dentist: D.D.S.: Doctor of Dental Surgery; D.M.D.: Doctor of Dental Medicine

Lawyer: LL.B.: Bachelor of Laws; J.D.: Doctor of Jurisprudence (not a doctorate); LL.L: Licence en Droit (Québec universities and University of Ottawa; B.C.L.: Bachelor of Civil Law

Librarian: M.L.S.: Master of Library Science; B.L.S.: Bachelor of Library Science

Physician: M.D.: Medical Doctor

Veterinarian: D.V.M.: Doctor of Veterinary Medicine; D.M.V: Docteur en Médecine Vétérinaire

3. “University Title” means any document conferred by universities recognized by the Government of Chile and shall be deemed to be equivalent to the Minimum Education Requirements and Alternative Credentials for that profession. In the case of the profession of Lawyer (Abogado), the title is conferred by the Supreme Court of Chile.

4. “State/provincial licence” and “State/provincial/national licence” mean any document issued by a provincial or national government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.

5. “Post-Secondary Diploma” means a credential issued, on completion of two or more years of post-secondary education, by an accredited academic institution in Canada or the United States of America.

6. “Post-Secondary Certificate” means a certificate issued, on completion of two or more years of post-secondary education at an academic institution: in the case of Mexico, by the federal government or a state government, an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law; and in the case of Chile, by an academic institution recognized by the Government of Chile.

7. A business person in this category must be seeking temporary entry to work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics.

8. A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment or prevention of disease.

2. CANADA-PERU FREE TRADE AGREEMENT (FTA)

Background

The Canada-Peru FTA was signed in 2008 and became effective August 1, 2009. Chapter 12 of the Agreement entitled *Temporary Entry for Business Persons* is modeled on the NAFTA but contains some differences, which are highlighted below.

These differences include:

1) Permanent residents:

The inclusion of the permanent residents (not only citizens) of each country in the Canada-Peru FTA is different from the NAFTA (see Appendix G, section 1.6). Therefore, proof of permanent resident status is also an accepted document for presentation in support of an application.

2) Business visitors (Appendix G, sections 2.2, 2.6 and 2.7):

- the addition of "Meetings and Consultations" to the categories of Business Visitors;
- the inclusion of after-lease servicing in addition to after-sales servicing; and
- under General Service, the addition of:
    - cook personnel (cooks and assistants) attending or participating in gastronomic events or exhibitions, or consulting with business associates;
    - information and communication technology service providers attending meetings, seminars or conferences, or engaged in consultations with business associates; and
    - franchise traders and developers who seek to offer their services.

3) Intra-company transferees (Appendix G, section 4):

- employed continuously by the enterprise for **six months** (versus one year for NAFTA) within the three-year period immediately preceding the date of application for admission; and
- the intra-company transferees category has expanded to include a new category of "**management trainee on professional development"**, meaning an employee with a post-secondary degree who is on a temporary work assignment intended to broaden that employee's knowledge of and experience in a company in preparation for a senior leadership position within the company.

4) Professionals and Technicians (Appendix G, section 3.2):

- **professionals** are listed using a **negative** list, meaning that all professionals that meet the general definition of professionals are covered, except for the professionals included in the list in the chart below.

    Note: professional means a national of a Party who is engaged in a specialty occupation[1] requiring:
    (a) theoretical and practical application of a body of specialized knowledge, and who is eligible to obtain a certification or license to practice, if required; and
    (b) the attainment of a post-secondary degree in the specialty requiring four or more years of study as a minimum for entry into the occupation[2];

- **technicians** are listed using a **positive** list, meaning that only those technicans included on the list of technicians are covered (see the list below).

Canada-Peru FTA
PROFESSIONALS - <u>NOT</u> covered
➢ All Health, Education, and Social Services occupations and related occupations:
Managers in Health/Education/Social & Community Services
Physicians/Dentists/Optometrists/Chiropractors/Other Health Professions
Pharmacists, Dietitians & Nutritionists
Therapy & Assessment Professionals
Nurse Supervisors & Registered Nurses
Psychologists/Social Workers
University Professors & Assistants
College & Other Vocational Instructors
Secondary/Elementary School Teachers & Counsellors
➢ All Professional occupations related to Cultural Industries, including:
Managers in Libraries, Archives, Museums and Art Galleries
Managers in Publishing, Motion Pictures, Broadcasting and Performing Arts
Creative & Performing Artists
Recreation, Sports and Fitness Program and Service Directors
Managers in Telecommunication Carriers
Managers in Postal and Courier Services
Managers in Manufacturing
Managers in Utilities
Managers in Construction and Transportation
Judges, Lawyers and Notaries except Foreign Legal Consultants
TECHNICIANS that <u>are</u> covered:
Civil Engineering Technologists and Technicians
Mechanical Engineering Technologists and Technicians
Industrial Engineering and Manufacturing Technologists and Technicians
Construction Inspectors and Estimators
Engineering Inspectors, Testers and Regulatory Officers
➢ Supervisors in the following:
Machinists and Related Occupations
Printing and Related Occupations
Mining and Quarrying
Oil and Gas Drilling and Service
Mineral and Metal Processing
Petroleum, Gas and Chemical Processing and Utilities
Food, Beverage and Tobacco Processing,
Plastic and Rubber Products Manufacturing
Forest Products Processing
Textile Processing
➢ Contractors and Supervisors in the following
Electrical Trades and Telecommunications Occupations

Pipefitting Trades
Metal Forming
Shaping and Erecting Trades
Carpentry Trades
Mechanic Trades
Heavy Construction Equipment Crews
Other Construction Trades
Installers, Repairers and Servicers
Electrical and Electronics engineering Technologists and Technicians (includes electronic service technicians)
Electricians (includes industrial electricians)
Plumbers
Industrial Instrument Technicians and Mechanics
Aircraft Instrument, Electrical and Avionics Mechanics, Technicians and Inspectors
Underground Production and Development Miners
Oil and Gas Well Drillers, Servicers and Testers
Graphic Designers and Illustrators
Interior Designers
Chefs
Computer and Information System Technicians
International Purchasing and Selling Agents

NOTES

1. A professional specialty occupation shall mean an occupation which falls within the National Occupation Classification (NOC) levels 0 and A.

2. These requirements shall be those defined in the NOC.

Appendix C Diplomats

1. DIPLOMATS, CONSULAR OFFICERS, REPRESENTATIVES, OFFICIALS (AND THEIR FAMILY MEMBERS) ACCREDITED TO CANADA [R186(b) & (c)]

R186. A foreign national may work in Canada, without a work permit

(b) as a foreign representative, if they are properly accredited by the Department of Foreign Affairs and International Trade, and are in Canada to carry out official duties as a diplomatic agent, consular officer, representative or official of a country other than Canada, of the United Nations or any of its agencies or of any international organization of which Canada is a member.

Note: Diplomats entering Canada for the first time should not be referred for secondary examination. They have instructions to contact DFAIT in Ottawa for verification of credentials.

Definitions:

Properly accredited

This accreditation takes the form of a counterfoil in the individual's passport. In addition, every person over 16 years of age receives an identity card.

Diplomatic agent

Refers to a person in Canada who is accredited from a foreign state as a member of a diplomatic mission. Diplomatic missions are the foreign government offices established in the National Capital region, accredited to the Canadian Government to conduct diplomatic relations. Persons holding the rank of High Commissioner, Deputy High Commissioner, Ambassador, Chargé d'Affaires, Minister, Minister-Counsellor, First, Second or Third Counsellors, Counsellor, First Secretary, Second Secretary, Third Secretary, Attaché and Assistant Attaché are considered diplomats.

(Career) consular officer

Refers to a person in Canada who is accredited as a member of a consular post. Consular posts are foreign government offices established outside of the National Capital region to provide service to nationals of their community and liaise with Canadian officials on common points of interest (e.g., education, tourism, trade, etc.). Persons holding the rank of Consul General, Deputy Consul General, Consul, Deputy Consul, Vice-Consul and Consular agent are considered consular officers.

Of a country

Refers to a country, other than Canada, with which Canada has diplomatic relations and which has established a mission in Canada.

Of the United Nations or any of its agencies

The United Nations does not have an office in Canada, however, several of its agencies have offices throughout Canada. Members of these organizations will be accredited as representatives, senior officials or officials. Temporary or permanent staff of a U.N. organization in Canada are exempt from the requirement to hold a work permit pursuant to R179(b), irrespective of rank. All require an O-1 or D-1 visa, which is fee exempt. [Reference: Consular Manual 10.4.2(2)]

Members, officials or experts of the following United Nations agencies on U.N. businesses in Canada are accredited by Canada (this list is not exhaustive):

- International Civil Aviation Organization (ICAO) - Montreal
- United Nations High Commissioner for Refugees (UNHCR) - Ottawa

- United Nations Educational, Scientific, and Cultural Organization (UNESCO) - Québec
- United Nations Environment Program (Convention on Biological Diversity) (UNEP) - Montreal
- Multilateral Fund for the Protection of the Ozone Layer under the Montreal Protocol (UNEP) - Montreal

Persons entering Canada to take employment as officers of the Secretariat of ICAO require a letter of appointment indicating the person's official level at ICAO, signed by or on behalf of the Secretary-General of ICAO. Senior officers working for the Secretariat of ICAO are accredited. Experts on mission at ICAO are not.

International organizations in which Canada is a member

These organizations are not agencies or subsidiaries of the United Nations. They are organizations created by agreements. Canada has agreed to host these organizations and give its members protection similar to that given to the members of United Nations agencies. Members of these organizations will be accredited as permanent representatives, senior officials or officials. Members of the following organizations have been accredited:

- Commonwealth of Learning (COL) - Vancouver
- Energy Institute of Countries using French as a Common Language (EICF) - Québec
- Inter-American Institute for Cooperation on Agriculture (IICA) - Ottawa
- International Atomic Energy Agency (IAEA) - Toronto
- North American Commission for Environmental Cooperation (NACEC) - Montreal
- North Pacific Anadromous Fish Commission (NPAFC) - Vancouver
- North Pacific Marine Science Organization (PICES) - Sidney, B.C
- Northwest Atlantic Fisheries Organization (NAFO) - Dartmouth

Other offices

- Taipei Economic and Cultural Office Canada (TECO) - Ottawa, Toronto and Vancouver.
- Hong Kong Economic and Trade Office - (HKETO) Toronto

Accreditation applies only to the permanent staff assigned to Canada, and not to short term temporary staff coming to Canada to work at an international meeting. Non-diplomatic staff of an international organization (whether UN or non-UN as listed above) coming to work at meetings, etc. do not require work permits if they meet business visitor criteria.

International organizations or their secretariats, such as the ICAO, are not entitled to employ locally-engaged staff other than Canadian citizens or permanent residents. Therefore, no temporary residents are entitled to work at an international organization as locally-engaged staff.

2. FOREIGN GOVERNMENT OFFICIALS NOT ACCREDITED TO CANADA

Some foreign government officials are stationed in Canada as representatives of semi-official agencies and are not accredited by Canada. These officials are not part of diplomatic or consular missions and do not fall within R186(b). This includes organizations such as the Goethe Institute, IATA, the British Council and the National Tourist Office of Greece. Senior officials with these organizations require work permits, but may be eligible for an LMO exemption pursuant to R205(a) C12, if the criteria are met. Other officials and support staff require an LMO.

United States pre-clearance officers working in Canada are not accredited. Refer to "United States Government Personnel", Section 13.7.

Foreign government officials seeking temporary entry for the purpose of performing duties and providing services for their government in Canada should be dealt with as business visitors under R186(a). There must be no sales to the public, or other entry into the labour market.

Government officials seeking entry to perform duties with a federal or provincial agency pursuant to an exchange agreement with Canada should be dealt with as visitors under R186(e).

3. PRIVATE SERVANTS OF FOREIGN REPRESENTATIVES

Official status may be granted to the private servants of a member of a diplomatic mission, consular post or international organization. A "Household Domestic Worker Employment Agreement" (HDWEA) must be submitted by the employer either to the post or to DFAIT/Protocol. The post should not issue a visa until DFAIT/Protocol has approved the contract. The domestic worker or private servant is designated as being in the employ of a foreign representative, and permission to work in Canada is granted pursuant to R186(b).

Alternatively, applicants may seek to enter Canada as temporary workers under the Live-in Caregiver Program (LCP). (See OP 14 and IP 4.)

4. LOCALLY ENGAGED STAFF OF DIPLOMATIC AND CONSULAR MISSIONS

Locally engaged staff of diplomatic and consular missions will, in most instances, be citizens or permanent residents of Canada. However, policy permits diplomatic and consular missions, on the basis of reciprocity, to employ non-Canadian persons as locally-engaged staff, provided that there is no objection by DFAIT/Protocol.

Note: DFAIT will not approve persons in Canada for the sole purpose of working as a locally-engaged employee of a diplomatic or consular mission. In addition, normally the person would be of the same nationality of the mission itself.

Locally-engaged staff are not granted official status, nor are they granted any immunities, privileges or benefits under the provisions of the Vienna Convention. A work permit may be issued pursuant to R205(b), C20, noting the foreign mission as the employer.

U.N. and international organizations are not entitled to employ locally-engaged staff other than Canadian citizens or permanent residents (unless the foreign national already holds a work permit).

In summary:

- Persons wishing to work as locally engaged staff must submit a copy of the diplomatic note issued by DFAIT which states it has "no objection."
- Applicants must satisfy all the criteria of a 'temporary resident'.
- Applicants may apply within Canada pursuant to R199(i).
- A work permit that is exempt from an LMO may be issued, pursuant to R205, C20. The foreign mission is noted as the employer.

5. FAMILY MEMBERS OF FOREIGN REPRESENTATIVES IN CANADA

R186. A foreign national may work in Canada, without a work permit

(c) if the foreign national is a family member of a foreign representative in Canada who is accredited with diplomatic status by DFAIT and that DFAIT has stated in writing that it does not object to the foreign national working in Canada;

Workers who meet the definition above

Two conditions must be met for a foreign representative's spouse, son or daughter to work in Canada:

- They must be accredited by DFAIT (i.e., have a counterfoil in their passport). This shows the person meets the definition of family member of a foreign representative.
- They must have a letter of no-objection from DFAIT (normally only issued if there is reciprocal employment arrangement with that country). This shows that DFAIT has granted the person permission to work.

Family members who meet both conditions do not require a work permit before engaging in employment.

Non-accredited family members

DFAIT will only issue a letter of no-objection to persons who are accredited. Should a person not be accredited, DFAIT will refer that person to immigration officials.

Family members who are not accredited may qualify for a student or a work permit under regular immigration requirements.

Requirements for approval by DFAIT

DFAIT requires diplomatic and consular missions and international organizations in Canada to seek approval through diplomatic note or official letter for the employment of any member of the family forming part of the foreign representative's household.

DFAIT grants permission to work to those family members only in the following cases:

(a) The country has signed a Reciprocal Employment Arrangement (REA) with Canada. These arrangements allow for family members of Canadian foreign representatives abroad to be employed in the other country.

(b) The headquarters agreement of an international organization or UN organization includes an article stating that family members can work.

(c) Where DFAIT/Protocol is satisfied that circumstances warrant special processing, it has the discretion to approve such applications notwithstanding the absence of clearly established reciprocity.

Immunities and work permit requirements

- All family members of foreign representatives are subject to administrative or civil jurisdiction during their hours of employment.
- Persons exempt under R186(c) are eligible to work from the moment they receive a no-objection note from DFAIT. (This permisssion to work is normally 'open', with the exception that for some countries the note may be 'job specific'.)
- Persons exempt from a work permit under R186(c) may request a work permit to facilitate their movement in the labour market (i.e., to assure prospective employers that they have the authority to work in Canada). Such a request should be facilitated. The work permit may be issued pursuant to R205(b), C20.
- There may be family members of foreign representatives who are *not* exempt from the work permit requirement under R186(c). However, they may be included under an REA and be given permission to work by DFAIT, who will issue a letter of no objection indicating this. The work permit may be issued pursuant to R205(b), C20.

Procedures for issuance of a work permit (when requested or required)

- Persons must present a copy of the no-objection note issued by DFAIT (it normally indicates that reciprocity exists).
- Persons must present photocopies of the required pages of the passport, including a copy of the counterfoil. (Verification can be obtained by contacting DFAIT/Protocol at (613) 995-5957.)
- No restriction on the type of employment or on the employer should be imposed, except if indicated in the note. An open or, if a medical examination has not been passed, an open/ occupation restricted work permit should be issued.
- The work permit may be issued in Canada pursuant to R199 and may be exempt from an LMO R205(b), C20, due to reciprocity.
- "This document does not confer status" should be written in the remarks section of the work permit.

- The case type should indicate “official status”.

Note: If a foreign representative’s family member works without a no-objection letter from DFAIT, they cannot be reported under A44. Such infractions should be brought to the attention of DFAIT/Protocol, Diplomatic Corps Services by facsimile at (613) 943- 1075.

HOUSEHOLD DOMESTIC WORKER EMPLOYMENT AGREEMENT (HDWEA)

CIRCULAR NOTE NO. 0579 – DFAIT, Office of Protocol

The Department of Foreign Affairs presents its compliments to Their Excellencies the Heads of Diplomatic Missions and Chargés d’Affaires, a.i. accredited to Canada and has the honour to inform them of the revised policy concerning the entry into Canada of foreign domestic servants for members of diplomatic missions, consular posts and international organizations in Canada.

The Department has revised its policy following incidents of private servants being refused visas because they were unable to communicate in one of Canada’s two official languages. This revision is designed to resolve these problems and to standardize our policy concerning servants. However, this note does not apply to service staff, who will be the subject of a subsequent note. The Department would also like to emphasize that it is the responsibility of employers to ensure that their private servants’ working conditions comply with the minimum labour standards for their province of residence.

This Note supersedes all previous Circular Notes[1] concerning the employment of foreign domestic servants. **The changes in this circular are shown in bold and are underlined.**

The Department requests that the contents of this note be brought to the attention of all personnel on assignment in Canada and to the attention of appropriate authorities at the ministries of foreign affairs of sending states.

Part I of this note is the policy of the Department. **Part II** is the procedure to be followed in engaging “private servants” and sets out the minimal requirements of the Household Domestic Worker Employment Agreement (HDWEA). **Part III** contains a copy of the HDWEA.

The Department of Foreign Affairs avails itself of this opportunity to renew to Their Excellencies the Heads of Diplomatic Missions and Chargés d’Affaires, a.i. accredited to Canada the assurances of its highest consideration.

OTTAWA, April 14, 2005

PART I - POLICY

The Department of Foreign Affairs allows diplomats, consular officers or other official representatives to be accompanied during their posting to Canada by **live-in** domestic servants. Domestic servants who do not live in the residence of the employer must be Canadian Citizens or Permanent Residents of Canada.

1. DEFINITIONS

A) PRIVATE SERVANT

A private servant is a foreign domestic worker who resides with the employer and whose salary is the responsibility of the person for whom the private servant works; both parties being linked

[1] XDC-2482 of February 10, 1999; XDC-2197 of August 11, 1993; XDC-3752 of August 18, 1989; XDC-0033 of January 04, 1989; XDC-0496 of January 25, 1988.

through a contractual relationship. A private servant is considered a “member of the suite” of the employer as defined by the Immigration and Refugee Protection Regulations **R186** and as such will not be required to obtain an employment authorization before arriving in Canada.

To qualify as a private servant, a written agreement in the form of the HDWEA must be signed by both parties. A copy of this agreement appears in Part III of this Note. The terms and conditions of employment agreed upon should respect Canadian labour standards (**please note that in Canada minimum labour standards fall under provincial jurisdiction)** and other requirements as set out in this Note.

A private servant must undergo a medical examination, even if his/her country is visa exempt, as required by the Immigration Regulations and must have a minimum of one year's experience as a domestic servant. **It is also preferable for a private servant to have an understanding and basic speaking ability in one of the official languages of Canada, French or English, and we strongly encourage the employer to provide the servant with the means to undertake courses in one of the official languages to attain a speaking ability beyond this level.** As a general rule, a private servant cannot be a blood relative of the employer or the employer's spouse. Neither can the private servant be accompanied by dependants.

A private servant who complies with all the requirements will be issued an official visa, **even if his/her country is visa exempt**.

While only one written agreement is to be signed with the employee, an addendum could be attached to the HDWEA form if it is necessary to include additional elements in the agreement that are not required by the Department. For example, the commitment of enrolment in second language courses.

B) LIVE-IN CAREGIVER PROGRAM

This program is designed to allow a foreign domestic servant to apply for permanent resident status after the completion of two years of full-time employment as a live-in caregiver. Approval for employment under this program is given by HRSDC, provided the applicant meets the conditions of the program and provided that there are no Canadian Citizens or Permanent Residents who meet the requirements of the job.

A “Live-in Caregiver” is someone who works without supervision in a private household to provide care for children, care for seniors, or care for the disabled. A position such as driver, cook or housekeeper in a household where there are no children, disabled or elderly persons cannot be considered as a “live-in caregiver” position, and therefore would not meet the requirements of the program.

A successful applicant will receive an employment authorization allowing employment in Canada as a “Live-in Caregiver” from the appropriate Canadian mission overseas. After two years of full-time work in this capacity, the program participant can apply for permanent resident status in Canada. To be registered under this program the employer must contact the nearest Canada Employment Centre. The employer must make a written offer of employment using the form supplied by the Canada Employment Centre. For more information see OP 14 and IP 4.

A “Live-in Caregiver” will not enjoy any privileges and immunities under the Vienna conventions, or any other treaty or headquarters agreement. It should be noted that a “Live-in Caregiver” is considered to be “self-employed” and as such is totally responsible for taxes and other salary deductions required by law.

Diplomatic Missions that require further information on this program should contact the Citizenship and Immigration Officer at the Office of Protocol of the Department of Foreign Affairs.

2. CATEGORIES OF OFFICIALS WHO MAY BRING INTO CANADA PRIVATE SERVANTS IN THE CAPACITY OF A FOREIGN REPRESENTATIVE

Ambassadors/High Commissioners, other members of the diplomatic staff, members of the Administrative and Technical staff, career heads of consular posts, other career consular officers, consular employees and senior officials of international organizations may bring private servants of any nationality to Canada. Members of the service staff are not entitled to bring private servants to Canada.

3. NUMBER OF PRIVATE SERVANTS ALLOWED

The number of private servants that may be brought to Canada during a posting will depend upon the rank of the official.

A) Ambassadors, High Commissioners may bring into Canada a maximum of **four** private servants.

B) Diplomatic agents of the rank of Deputy High Commissioner, Deputy Head of Mission, Ministers, Minister-Counsellors, Counsellors, Consuls General, Heads of International Organizations, permanent national representatives to international organizations in Canada may bring into Canada a maximum of **two** private servants.

C) All other diplomatic agents, Consular Officers as well as Senior Officials of International Organizations may bring **one** private servant into Canada.

D) Members of the Administrative and Technical staff and Consular Employees may bring **one** private servant into Canada.

Requests for additional private servants will be considered on a case-by-case basis, and only in exceptional circumstances. (See Part II for the procedure.)

4. LOCALLY-ENGAGED

It should be emphasized that a person who is a Canadian Citizen or Permanent Resident of Canada may be hired locally as a domestic servant without restriction. A locally-engaged employee will not be given an Official Acceptance by the Office of Protocol.

5. MINIMUM CANADIAN EMPLOYMENT STANDARDS

Through the HDWEA the employer voluntarily undertakes to respect Canadian employment standards in Canada, the employment standards are determined by provincial authorities. Part II of this Note outlines the minimum standards established by the provinces of Quebec and Ontario **and websites with contact details for the relevant ministries.** If the employer resides in another province the Office of Protocol will provide, upon request, information about the minimum standards in that province.

The Department would like to draw attention to the fact that, in Canada, there is a minimum age requirement for employment. The minimum age varies from province to province. The Department will not authorize the employment of a person under the minimum age.

6. LENGTH OF STAY

Initially, a private servant will be granted an official acceptance of two years with the possibility of yearly extensions to a maximum of seven years. The private servant will be required to leave Canada upon termination of the contract, at the end of the employer's posting or after seven years, whichever is earliest.

7. TRANSFER REQUEST

The transfer of a private servant to another employer will be permitted if both the parties requesting the transfer have respected the terms and conditions of the previous contract. In cases of transfer, the employee will not be allowed to receive any extensions beyond seven years from the date of the first engagement.

8. NEW CONTRACT

A private servant who has been in Canada for the maximum period of seven years and who wishes to find a new employer and return to work in Canada under an official acceptance will be allowed to do so only after a stay abroad of at least six months and if the private servant has respected the terms and conditions of the HDWEA with the previous employer(s).

9. DEPENDENTS

A private servant may not bring dependants to Canada. A husband-and-wife team working for the same employer will be considered as two private servants. **However this will only be possible in the case of employers who are allowed two or more private servants (see Part I section 3 A) & B)).**

10. BLOOD-RELATIONSHIP WITH THE FAMILY OF THE EMPLOYER

The Department will not accept as a private servant, a person who is a close blood relative of the employer or the employer's spouse. However an employer is permitted to have as a private servant, a person who is a tribal relation. The office abroad will verify this element and advise the Office of Protocol accordingly before a visa is issued. **Blood relationship means a first degree relationship with the employer and/or the employer's spouse. This includes grandparents, parents, brothers or sisters, nephews or nieces, sons or daughters or grandchildren.**

11. EXPERIENCE REQUIREMENTS

The employee must have a minimum of one year of experience as a domestic or in that field of work and **preferably** an understanding and basic speaking ability in one of the official languages of Canada French or English. Experience gained from working in a context other than one of an employer-employee relationship will not necessarily be deemed as an acceptable experience. In short, the future employee must have the necessary qualifications to perform the tasks that are described in the HWDEA.

12. BREACH OF CONTRACT

A foreign official who fails to respect the terms and conditions of the HWDEA will not be allowed further private servants. A private servant who violates the terms and conditions of the contract will not be allowed to change employers.

An employer may, however, change a private servant during the course of a normal posting on condition that the previous private servant has completed his/her contract, has transferred employer or has left Canada.

13. TERMINATION OF EMPLOYMENT

As far as is possible, the Office of Protocol should be informed by Diplomatic Note a minimum of two weeks in advance of the termination of a private servant's employment, together with details of the arrangements made for the person's departure from Canada. The identity card of the employee must be returned to the Office of Protocol, along with the employee's passport for an adjustment to the official acceptance.

PART II - PROCEDURES FOR PRIVATE SERVANTS

Whether the official is in Canada or still abroad, the employer is required to complete a HDWEA for each private servant brought into Canada.

1. STEP ONE - SIGNATURE OF HDWEA

A person in Canada who wishes to bring a foreign domestic worker as a private servant, is required to complete the HDWEA.

INITIATION OF THE PROCEDURE

A) An HDWEA must be filled out and signed by the employer.

B) When the future employer is in Canada, **permission must be requested from** the Office of Protocol by Diplomatic Note to which is attached a copy of the HDWEA.

Once approved by the Office of Protocol the original HDWEA must be sent by the employer to the future employee for signature.

When the future employer is abroad, the HDWEA signed by the two parties should be forwarded directly to the Canadian mission along with the future employee's application for a visa. **The mission will fax a copy of the HDWEA to the Office of Protocol for its approval.**

C) It is the responsibility of the future employer to ensure that the original version of the HDWEA is provided to the future employee for submission to the Canadian mission abroad; a copy should be retained by the prospective employee.

D) The prospective employer must also keep a copy, as a copy must be attached to the Diplomatic Note requesting accreditation for the private servant.

2. STEP TWO - VISA APPLICATION

The future employee must file an application for visa and attach the original of the HDWEA signed by both parties to the application. All private servants must go through the visa process irrespective of whether the country is visa exempt.

When a copy of the HDWEA has been sent **directly** to the Office of Protocol (see Part II (1)(B), the Office of Protocol will inform in advance the Canadian mission that the future employee will present an application for visa, together with the original of the HDWEA signed by the two parties.

3. STEP THREE - HDWEA APPROVAL

The HDWEA must be approved by the Office of Protocol. To be approved the HDWEA must meet the minimum Canadian labour standards. In cases where clarifications are needed, the information should be sought from the Citizenship and Immigration Officer at the Office of Protocol.

CANADIAN STANDARDS

The minimum standards to be respected for wages and benefits, accommodation and hours of work are based on minimum requirements established by federal and provincial authorities. The minimum standards in the provinces of Ontario and Quebec are outlined in the annex to this Circular Note. If the employer resides in another province the Office of Protocol will provide, upon request, information about the minimum standards in that province. A HDWEA that has terms and conditions of employment which are lower than Canadian minimum standards will not be approved, even if the HDWEA has been accepted by the prospective employee.

4. STEP FOUR - REQUIREMENTS

The following requirements must be satisfied prior to the issuance of an entry visa:

- the future employer qualifies for a foreign domestic servant;
- the future employer has not exceeded the number of foreign domestic servants allowed;
- the future employee is not a blood relative of the employer or the employer's spouse;
- the future employee is of the minimum age to work in the province of residence;
- the future employee has a minimum of one year of experience as a domestic or in that field of work;
- the future employee satisfies the requirement of a medical examination as set out in the Immigration Regulations;

- **the future employee, preferably, has an understanding and basic speaking ability in one of the official languages of Canada, French or English;**
- the length of stay requested for the future employee does not exceed the length of stay allowed under this policy;
- the employer and future employee have respected their obligations and the terms of previous HDWEAs;
- the future employee is not accompanied by dependents.

5. MEDICAL EXAMINATION

In each case, even for persons whose country is visa exempt, the private servant must undergo a medical examination as required by Immigration Regulations. The results will have to be known before the private servant is issued a visa, which is required in all cases.

A visa will not be issued to a private servant who is inadmissible to Canada for medical reasons.

6. ROLE OF THE CANADIAN MISSION ABROAD

The Canadian mission will evaluate the applicant's expertise and/or a possible blood relationship with the employer. It will inform the office of Protocol of those results. The Mission will also ensure that a medical examination is done.

A copy of the HDWEA will be faxed to the Office of Protocol of the Department of Foreign Affairs in Canada, which will ensure that it meets Canadian labour standards, and that the employer is entitled to a private servant. The Office of Protocol will advise the mission of its decision.

Where a diplomat is already in Canada, the Canadian mission abroad may confirm with the Office of Protocol the number of private servants already in the service of the employer or the circumstances surrounding the replacement.

The private servant will be issued an official visa, even if his/her country is visa exempt. Where such a visa is issued, a private servant does not need an employment authorization.

When a visa is granted to a private servant the original of the HDWEA must be sent by the Canadian mission to the Office of Protocol.

7. ARRIVAL IN CANADA

Upon arrival in Canada the private servant will be granted admission as a visitor. The mission should present the private servant to the Office of Protocol by way of a Diplomatic Note, together with a copy of the HDWEA signed by both parties, the passport, three passport size photos and two registration cards (Ext 231).

The private servant will then be issued an official acceptance by the Office of Protocol and will receive an identification card.

HOUSEHOLD DOMESTIC WORKER EMPLOYMENT AGREEMENT

Prospective Employer

Name: _____

Title/rank and mission: _____

Residential address: _____

Telephone number: _____

FW 1 Temporary Foreign Worker Guidelines

Prospective Employee

Name: _____

Date of birth: ___/___/___ Male ____ Female ____

Address: _____

Telephone: _____

Marital Status:

Married __ Separated __ Single __ Divorced __ Other__

Number of dependents: ___ children ___ other ___

Please note that a domestic employee may not be accompanied by dependants.

The minimum age requirement for a private servant has been set at 18.

The Department will cease to recognize the official status of private servants who get married or become expectant in Canada.

I - WORK BACKGROUND

1. Current employment: _____

2. Years of experience as a private servant: _____

II - JOB REQUIREMENTS

3. Language

Outline the language to be spoken in house:

_____

Outline other languages spoken by the future employee:

_____

Which official language of Canada does the future employee possess a knowledge of:

ENGLISH FRENCH NONE

Indicate whether you plan to provide second language courses for your future employee:

ENGLISH FRENCH NONE

Specialized Training

Outline specialized training taken by the private servant:

_____

III- DUTIES Proportion of time spent in:

1.	Child Care	____ %
2.	Home Care	____ %
3.	Cooking	____ %
4.	Miscellaneous responsibilities	____ %

IV - TERMS AND CONDITIONS

ALL SECTIONS MUST BE COMPLETED

1. DURATION

Duration of employment: _____

The duration of employment cannot exceed the duration of the posting of the employer.

The maximum length of stay as a private servant is 7 years at which time the private servant is required to leave Canada. (This includes time spent working for other diplomats).

Wages	Canadian Employment Standards	
	Ontario	Quebec
Gross wage: $_____ **Paid weekly_____ monthly _____.** **Wages will be paid by:** **cheque_____ cash _____.** **Wages will be paid in _____ currency.**	**Effective March 31, 2009, minimum wage is:** **$9.50 per hour** **$418.00 per week of 44 hours** **$1811.33 per month (44 hour week)**	**Effective May 1, 2009, minimum wage is:** **$9.00 per hour** **$360.00 per week of 40 hours** **$1560 per month (40 hour week)**

Overtime salary	Canadian Employment Standards	
	Ontario	Quebec
Overtime will be paid at $_____ per hour.	**A minimum of one and one-half times (1.5) the regularly hourly rate of pay for each hour worked beyond 44 hours per week.** **<u>E.g.:</u> $14.25 per hour for an hourly wage of $9.50.**	**A minimum of one and one-half (1.5) times the regular hourly rate of pay for each hour worked beyond 40 hours per week.** **<u>E.g.:</u> $13.50 per hour for an hourly wage of $9.00.**

Compensatory Time	Ontario	Quebec
For overtime worked during a free period.	A minimum of one-and one-half times the free time for each hour worked during a period of free time.	A minimum of one-and one-half times the free time for each hour worked during a period of free time.

Period of rest	Canadian Employment Standards	
	Ontario	Quebec

One period of rest for every _____ consecutive hours should be given each week. This period cannot be divided into shorter periods.	The employee is entitled to a minimum of: a rest period of 24 consecutive hours per week, **<u>or</u>** a rest period of 48 consecutive hours every two weeks.	The employee is entitled to a minimum of: a rest period of 32 consecutive hours.
Free time	**Ontario**	**Québec**
This standard applies even if the employer and employee have agreed in writing to extend the workday beyond the eight-hour daily maximum.	The employee must be permitted 11 hours of free time per day.	N/A

Hours of work	**Canadian Employment Standards**	
	Ontario	**Quebec**
The work day begins at _____ and ends at _____. This includes _____ hours of free time per day (meals and breaks) Overtime wages shall be paid beyond the regular hours of work.		
Vacation time	**Ontario**	**Quebec**
Vacation time is given at a time agreeable to the employer, but must be given within the next 10 months. _____ weeks of paid vacation per year will be given. _____ sick days per month will be given.	At least two weeks after a 12-month period of employment.	At least two weeks after a 12-month period of employment.

Vacation pay	**Canadian Employment Standards**	
	Ontario	**Quebec**
	Should be four percent (4%) of the total wages earned during the twelve months of employment (which includes overtime and bonus).	Should be four percent (4%) of the total wages earned during the twelve months of employment (which includes overtime and bonus).
Holidays	**Ontario**	**Quebec**

A minimum of 8 days per year. If an employee is required to work on a public holiday, the employer may substitute another working day with pay. This substitute day off must be granted not later than the employee's next annual vacation. If a substitute arrangement is not made, the employee must be paid at least time and one-half the regular rate for the hours worked, in addition to the regular day's pay for that holiday.	If a public holiday falls on an employee's day off or during an employee's annual vacation, that employee is entitled to another working day off with pay in place of the missed holiday. Or, if the employee agrees, compensation may take the form of an extra day's pay.	If a public holiday falls on an employee's day off or during an employee's annual vacation, that employee is entitled to another working day off with pay in place of the missed holiday. Or, if the employee agrees, compensation may take the form of an extra day's pay.
Weekly deductions and accommodation	**Canadian Employment Standards**	
	Ontario	**Quebec**
To qualify as a private servant the employee must reside in the employer's household. Room and board: an amount of $_____ will be deducted monthly from gross salary for the cost of room and board. *The amounts for room and board that may be deducted from the employee's salary are set by Canadian employment standards. However, these values may not be applied unless the room is occupied and the meals received.* Accommodation provided will be _____ private _____ shared. Bathroom facilities provided will be ____ private _____ shared. Personal cooking and laundry facilities will be _____ private _____shared.	The maximum weekly deduction for a private room and meals is $85.25. The maximum weekly deduction for a non-private room and meals is $53.55.	The maximum weekly deduction is $40.00 per week for room and board.
Health insurance		
The employer agrees to provide adequate health insurance. No amounts will be deducted from the employee's salary as compensation for the cost of the health insurance provided by the employer.		
Transportation		
Transportation costs to and from Canada for the private servant will be borne entirely by the employer. At no time may these expenses be deducted from the salary paid to the private servant.		

V- SIGNATURES

This agreement must be signed by both parties.

To be completed by the prospective employee:

I, _____, am the prospective employee identified in the present agreement and declare the following:

I understand the requirements, duties, terms and conditions of the offer of employment as outlined in the Household Domestic Worker Employment Agreement and accept them.

I hereby undertake to respect the following conditions:

a) I will remain in the full time employment of the above-mentioned employer only.

b) I will leave Canada upon termination of my employment or after a maximum of seven years whichever comes first.

c) I will not, without just cause, leave the employment of this employer.

d) I will undertake a medical examination prior to commencing employment and I give my permission to the Department of Foreign Affairs to disclose to my future employer my medical condition.

_____ _____

Employee's signature Date

To be completed by the prospective employer:

I, _____, am the prospective employer identified in the present agreement and declare the following:

I acknowledge my intention to abide by the terms and conditions of this Household Domestic Worker Employment Agreement and that failure to do so may result in denial of future requests.

I understand that with regard to the entry and temporary stay in Canada of my employee I am further required to:

a) notify the Office of Protocol promptly of the date of arrival in Canada of my employee and of the commencement and termination of employment with me;

b) notify the Office of Protocol promptly of the date and place of departure from Canada of my employee on the termination of employment and to ensure the means of travel for the return to their country of residence are provided;

c) ensure that the travel documents of my employee are at all times valid and are acceptable for admission to the country of my employee's nationality or any other country;

d) comply voluntarily with federal and provincial standards for wages and working conditions in the interests of my employee.

_____ _____

Employer's signature Date

VI-REFERENCES

Canadian employment standards Web sites:

ONTARIO
http://www.labour.gov.on.ca/english/es/index.html

QUEBEC
http://www.cnt.gouv.qc.ca/en/home/index.html

ALBERTA
http://employment.alberta.ca/SFW/1224.html

BRITISH COLUMBIA
www.labour.gov.bc.ca/esb/

NEW BRUNSWICK
www.gnb.ca/0308/index-e.asp

NOVA SCOTIA
www.gov.ns.ca/lwd/employmentworkplaces

MANITOBA
http://www.gov.mb.ca/labour/standards/

SASKATCHEWAN
http://www.labour.gov.sk.ca/LS/

NEWFOUNDLAND
http://www.hrle.gov.nl.ca/lra/labourstandards/default.htm

PRINCE EDWARD ISLAND
http://www.canadabusiness.ca/gol/bsa/site.nsf/en/su07223.html

YUKON
http://www.canadabusiness.ca/gol/bsa/site.nsf/en/su07226.html

NORTHWEST TERRITORIES
http://www.canadabusiness.ca/gol/bsa/site.nsf/en/su07095.html#tphp

NUNAVUT
http://www.canadabusiness.ca/gol/bsa/site.nsf/en/su07097.html

Appendix D General Agreement on Trade in Service (GATS)

Like the NAFTA, the temporary entry of business persons under GATS can be facilitated without the need for an LMO. In the area of temporary entry of natural persons, Canada requested and offered access for three categories of business persons: Business visitors, intra-company transferees and Professionals.

Both business vistors and intra-company transferees entering under GATS qualify under Canada's generally applicable immigration rules: R186(a) and R205(a) C12. However, there are unique rules for the entry of professionals under GATS. These professionals may be granted work permits pursuant to R204, T33 if they meet the criteria outlined below.

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 below, 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. The Professionals category is designed to facilitate the short-term entry of a limited list of professionals employed by service providers of Member nations, in those service sectors to which Canada has made commitments.

CONDITIONS OF ADMISSION

Occupations covered

Group 1 includes six occupations: Engineers, Agrologists, Architects, Forestry professionals, Geomatics professionals and Land surveyors.

Group 2 includes three occupations: Foreign legal consultants, Urban planners and Senior computer specialists. Professionals in this group are subject to additional requirements pertaining to the prospective enterprise in Canada and the foreign service provider. As well, limits exist for the number of persons allowed entry under specific projects.

GATS PROFESSIONAL OCCUPATIONS, TOGETHER WITH MINIMUM EDUCATIONAL REQUIREMENTS, ALTERNATIVE CREDENTIALS AND OTHER LICENSING REQUIREMENTS

GROUP 1		
Occupation	**Minimum educational requirement alternative credentials**	**Other requirements**
Engineer	Baccalaureate degree*	Provincial licence**
Agrologists	Baccalaureate degree in agriculture or related science plus four years of related experience	Licensing required in New Brunswick, Alberta & Quebec. Temporary licensing required in British Columbia.
Architects	Baccalaureate degree in architecture	Provincial licence and certificate required to practice
Forestry Professionals	Baccalaureate degree in forestry management or forestry engineering, or a provincial licence	Licensing as a forester or forestry engineer is required in Alberta, British Columbia & Quebec.
Geomatics Professionals***	Baccalaureate degree in surveying, geography or environmental sciences plus three years related experience.	
Land Surveyors	Baccalaureate degree	Provincial licence
GROUP 2		
Foreign Legal Consultants	Baccalaureate degree in law	Provincial licence
Urban Planners	Baccalaureate degree in urban planning	Provincial licence
Senior Computer	Graduate degree**** in computer	

Specialists	sciences or related discipline and ten years experience in computer sciences.	

* Baccalaureate means a degree from an accredited academic institution in Canada or equivalent.

** Provincial licence means any document issued by a provincial government or under its authority which permits a person to engage in a regulated activity or profession.

*** Geomatics Professionals must be working in aerial surveying or aerial photography.

**** Graduate degree means at least a Master's degree from an accredited academic institution in Canada or equivalent. Academic equivalencies will be determined by the relevant equivalency services in Canada.

Validity period

The time limit imposed is a maximum three months or 90 consecutive days within a twelve-month period.

Employment

The applicant must be seeking entry pursuant to a signed contract between the foreign service provider and a Canadian service consumer, and must work in one of the service sectors listed above.

Credentials

Applicants must have their academic credentials and professional qualifications recognized by the professional association in Canada before entry can be granted and must have been granted a licence (where applicable). See paragraph on credential and licensing requirements below.

Secondary employment

Secondary employment is not permitted (prohibition on working for an employer who is not named on the authorization) and extension of the employment authorization as a GATS professional beyond the 90 days is not permitted.

CRITERIA

The applicant must meet the following criteria:

1. Possess citizenship of a Member nation, or the right of permanent residence in Australia or New Zealand. Note that member nations (numbering 148 as of 2005) are listed on the World Trade Organization website at http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm. Citizens of Observer nations are not eligible.

2. Deliver a service pursuant to a signed contract between a Canadian service consumer and a service provider of a WTO member nation. In the case of foreign legal consultants, urban planners and senior computer specialists, the foreign service provider must not have a commercial presence in Canada;

3. Posess professional qualifications in an occupation identified in the chart above.

4. NOT provide service in any of the following service sectors: education, health related services or recreational, culture and sports services.

5. Posess qualifications that have been recognized, where appropriate, by the professional association in Canada.

6. Comply with existing immigration requirements for temporary entry, including TRV requirements.

7. In the case of foreign legal consultants, urban planners and senior computer specialists, the employer in Canada must be engaged in substantive business.

8. In the case of senior computer specialists, a limit of ten entrants per project has been imposed.

9. Entry is for a period of 90 days.

INTERPRETIVE NOTES

Personnel agencies:

Where the contract is between a Canadian company and a foreign personnel placement or personnel supply agency to supply the Professional, entry may not be granted pursuant to the GATS, even where the occupation is listed in the professional category.

Remuneration

The Professional may or may not be remunerated in Canada.

Doing business

The Professional's foreign-based employer must have been established for a reasonable period of time and be actively "doing business". (See section 4.3 of Appendix G, intra-company transferees, for a definition.)

Legal Consultants, Urban Planners & Senior Computer Specialists

In the case of Legal Consultants, Urban Planners and Senior Computer Specialists, our GATS commitments further specify that the Canadian company party to the contract must not be a personnel placement or personnel supply agency.

The fact that the employer in Canada must be engaged in substantive business is interpreted to mean that the enterprise is not a shell or established merely for the purpose of facilitating the entry of foreign workers. Officers will have to rely on information provided by the applicant and supported by documents from the employer in Canada.

The requirement that the foreign service provider not have a commercial presence in Canada can only be established by relying on information provided by the applicant. Officers should confirm that the professional is not seeking entry to provide services to their company or employer, which has established itself in Canada simply to facilitate the entry of its own employees.

As there is no central body responsible for regulating computer specialties, the entry of Senior Computer Specialist is restricted to individuals with a Masters Degree in a related discipline, as well as documented ten years experience in that field. The criteria was introduced as a control measure to ensure that only highly qualified experienced computer specialists are permitted entry under the GATS professional category.

The limit of ten entrants per project imposed on Senior Computer Specialists can be verified by relying on information provided by the foreign service provider or the service consumer in Canada.

DOCUMENTATION REQUIRED

- Citizenship of a Member nation (listed at www.wto.org) or permanent resident status in Australia and New Zealand;
- Copy of a signed contract between the service provider and the Canadian service consumer; the contract may have been signed by a foreign service provider located in any Member nation or by a Canadian-based company established by that foreign service provider to sell its services in Canada;
- Documentation which provides the following information:
  - the profession for which entry is sought and province of destination;
  - details of the position (job description, duration of employment, arrangements as to payment); and
  - the educational qualification or alternative credentials required to discharge job duties in Canada;

- Evidence that the applicant has professional qualifications as detailed in the chart (copies of degrees, diplomas, professional licences, accreditation or registration, etc.);
- Documentation from the appropriate professional association in Canada, indicating that the applicant's academic credentials and professional qualifications have been duly recognized; and
- Where required, a temporary or permanent licence issued by the appropriate provincial government.

Credentials and licensing

In processing applications from Professionals, it is essential that officers refer to the chart in order to understand what credentials are required for each occupation and which provinces issue licences for the practice of those occupations.

If a licence to practice in Canada is required, officers cannot issue a work permit unless the applicant has obtained, prior to arrival in Canada, a temporary or permanent licence from the appropriate province.

If the applicant presents a provincial licence, it is not necessary for officers to examine the documentation from a professional association or the applicant's professional qualifications as the province has already done that, except in the case of Foreign Legal Consultants, Urban Planners and Senior Computer Specialists where the foreign-based employer cannot be established in Canada.

If no licence is required to practice in Canada, officers cannot issue a work permit unless the applicant can produce documentation from an appropriate professional association in Canada, indicating that their academic credentials and professional qualifications have been recognized.

If the applicant presents such documentation from the appropriate professional association in Canada, it is not necessary for officers to examine the applicant's educational credentials as the professional association has already done that.

IMMIGRATION DOCUMENTATION

The work permit should be coded using Exemption Code T33.

Applications for work permits may be made at a visa office or at a POE (for applicants who do not require a temporary resident visa).

There is a firm time limit on the entry of GATS Professionals. They should be granted status for the period required to complete the work, up to a maximum of three months. Extensions must not be granted beyond three months.

Appendix E International Youth Programs – C21

(See Section 5.34 of this manual for more information)

ALPHABETICAL LIST BY COUNTRY

Country	Name of program	Eligibility	Type of work permit	Maximum validity period
Argentina	SWAP	18-35 years of age	open	12 months
Armenia	Chantiers jeunesse/ Republican Headquarters of Student Brigades-Voluntary Service of Armenia (HUJ)	18-30 years of age	open	6 months
Australia	SWAP	18-30 years of age	open	24 months – may re-apply multiple times
Australia	WHP	18-30 years of age	open	24 months – may re-apply multiple times
Australia	Young Professionals, Youth workers, Cooperative Education work placements	18-30	employer specific	24 months – may re-apply multiple times
Austria	Canada-Austria Intra- & Partner-Company Training Program	No limit	employer specific: permanently employed by an Austrian company, training with Canadian partner, subsidiary or parent company	12 month
Austria	Canada-Austria Young Workers Exchange	18-30 years of age (35 in exceptional circumstances) graduate of post-secondary program in forestry, agriculture or tourism	employer specific in field of studies (forestry, agriculture or tourism)	12 months
Austria	SWAP/Supertramp	18-35 years of age, student status	open	12 months
Belarus	Chantiers jeunesse/ Belarussian Association of International Youth Work (ATM)	18-30 years of age	open	6 months
Belgium	Office Québec/Wallonie-Bruxelles pour la jeunesse	18-30 years of age	employer specific	4-12 months
Belgium	Chantiers jeunesse	18-30 years of age	employer specific	12 months
Belgium	Tourisme Jeunesse/Youth Hostels Belgium	18-30 years of age	employer specific	12 months
Belgium	WHP	18-30 years of age	open	12 months
Brazil	SWAP	18-35 years of age, student status	open	12 months
Chile	SWAP	18-35 years of age	open	12 months
Chile	WHP	18-35 years of	open	12 months

		age, student status		
Chile	Young Professionals/Young Workers	18-35 years of age	employer specific	12 months
Chile	Co-operative education work placement	18-35 years of age	employer specific	12 months
Costa Rica	SWAP	18-35 years of age, student status	open	12 months
Czech Republic	Chantiers jeunesse/Centre for International Youth Exchange and Tourism	18-30 years of age	open	6 months
Czech Republic	WHP	18-35 years of age	open	12 months
Czech Republic	SWAP	18-35 years of age	open	12 months
Czech Republic	Young Professionals / Young Workers	18-35 years of age	employer specific	12 months
Czech Republic	Co-operative Education work placement	18-35 years of age	employer specific	12 months
Denmark	WHP	18-35 years of age, student status	open	12 months
Denmark	SWAP	18-35 years of age, student status	open	12 months
Dominican Republic	SWAP	18-35 years of age, student status	open	12 months
Finland	Canada-Finland Career Development Program	18-30 & college or university graduates within 2 years of applying	employer specific, career related	18 months
Finland	SWAP	18-35 years of age, student status	open	12 months
France	Canada-France Agreement: Professional Development	18-35 years of age	employer specific	18 months
France	Canada-France Agreement: Student Summer Job	18-35 years of age	employer specific	3 months, summer period
France	WHP	18-35 years of age	open	12 months
France	Canada-France Agreement: Work Placements (work term, internship, on-the-job training) as part of a study or training program	18-35 years of age	employer specific field related to current studies or training program	12 months
France	Chantiers jeunesse/ Compagnons Bâtisseurs	18-30 years of age	employer specific	3-12 weeks
France	Chantiers jeunesse/ Concordia; Rampart; UNAREC	18-30 years of age	employer specific	3-12 weeks
Germany	Youth Mobility Program – Young Professionals/Young Workers	18-35 years of age	employer specific	12 months
Germany	Youth Mobility Program – Practicum (Co-operative Education work placement)	18-35 years of age	employer specific	12 months
Germany	Youth Mobility Program – Work and Travel (WHP)	18-35 years of age	open	12 months
Germany	Canadian Association of University Teachers of German Work Student Program (CAUTG)	18-35 years of age	CAUTG is only for Canadians going to Germany	up to 12 months
Germany	German-Canadian Society Program (DKG)	18-35 years of age	employer specific and open	up to 12 months
Germany	Chantiers jeunesse/	18-35 years of	open	12 months

	Vereinigung Junger Freiwilliger (Union of Young Volunteers) (VJF)	age		
Germany	SWAP – College Council	18-35 years of age	open	12 months
Germany	Tourisme Jeunesse/Deutsches Jugenderbergswerk Hauptverband	18-35 years of age member of Hostelling International	employer specific, in a Youth Hostel	up to 12 months
Ireland	SWAP	18-35 years of age	open	12 months – may re-apply multiple times
Ireland	WHP* student and non-student	18-35 years of age	open	12 months – may re-apply multiple times
Italy	WHP	18-35 years of age	open	6 months
Italy	SWAP	18-35 years of age	ppen	6 months
Japan	WHP	18-30 years of age	open	12 months
Korea	WHP	18-30 years of age	open	12 months
Lithuania	Chantiers jeunesse/Centre of Student Activities (Litmina)	18-30 years of age	open	6 months
Latvia	WHP	18-35 years of age	open	12 months
Latvia	Young Professionals/Young Workers	18-35 years of age	employer specific	12 months
Latvia	Co-operative Educational Work Placement	18-35 years of age	employer specific	12 months
Luxembourg	Young Farmers Québec	18-30 years of age	employer specific	12 months
Mexico	SWAP	18-35 years of age, student status	open	12 months
Netherlands	SWAP	18-30 years of age	open	12 months
Netherlands	WHP	18-30 years of age	open	12 months
Netherlands	Young Professionals/Young Workers	18-30 years of age	employer specific	12 months
New Zealand	SWAP	18-30 years of age	open	12 months
New Zealand	WHP	18-30 years of age	open	12 months
Norway	WHP	18-35 years of age	open	12 months
Norway	Young Professionals/Young Workers	18-35 years of age	employer specific	12 months
Norway	Co-op work placement	18-35 years of age, student status	employer specific in field of study	12 months
Peru	SWAP	18-30 years of age	open	12 months
Poland	Chantiers jeunesse/Youth Voluntary Service	18-30 years of age	open	6 months
Poland	SWAP	18-30 years of age	open	12 months
Russia	Chantiers jeunesse/Youth Voluntary Service	18-30 years of age	open	12 months
Russia	SWAP	18-30 years of age	open	12 months
Slovak Republic	Chantiers jeunesse/NEX - Slovakia (Assn. for Int. Youth	18-30 years of age	open	6 months

	Exchange & Tourism			
Slovak Republic	SWAP	18-30 years of age	open	12 months
South Africa	SWAP	18-30 years of age	open	12 months
Spain	Chantiers jeunesse/Instituto Catalan de Servicios a la Juventud	18-30 years of age	open	12 months
Sweden	University of Alberta/Swedish University of Agricultural Sciences	18-30 years of age, student status	employer specific	12 months
Sweden	WHP	18-30 years of age	open	12 months
Sweden	Young Professionals/Young Workers	18-30 years of age	employer specific	12 months
Sweden	Co-operative Education work placement	18-30 years of age	employer specific in field of study	12 months
Switzerland	Canada-Switzerland MOU Professional Development	18-35 years of age	employer specific in field of study	18 months
Switzerland	Co-operative Education work placement / Canada-Switzerland MOU Work Placements (work term, internship, on-the-job training) as part of a study or training program	18-35 years of age	employer specific in field of study	18 months
United Kingdom	Chantiers jeunesse/United Nations Association Wales (UNA Wales, IVS)	18-30 years of age	open	12 months
United Kingdom	Student General WHP	18-30 years of age, student statusl	employer specifice	12 months – may re-apply multiple times
United Kingdom	SWAP-BUNAC, student and non-student	18-30 years of age part-time or full-time students	open	12 months – may re-apply multiple times
United States	Chantiers jeunesse/Council of International Educational Exchange (CIEE)	18-30 years of age	open	12 months
United States	SWAP	18-30 years of age registered as a full-time student at an accredited U.S. college or university	open	6 months, may re-apply after completing one year of full-time post-secondary study (no limit)
Multilateral Exchange	International Agricultural Exchange Association Canadian Host Family Association (CHFA)	18-30 years of age	employer should be specified as IAEA; may engage in employment for any host family approved by the CHFA/IAEA.	12 months
Multilateral Exchange	IASEC (present in 109 countries)	18-30 years of age	employer specific	18 months – may re-apply multiple times
Multilateral Exchange	IAESTE (present in 81 countries)	18-35 years of age	employer specific	18 months – may re-apply multiple times
Multilateral Exchange	International Cooperative Education (ICE) / work placements only - ** participating institutions subject to change	18-30 years of age	employer specific	12 months
	Australia (Ballarat U College & Swinburne U of			

	Technology/ U of Victoria)			
	Australia (U of South Australia / Ryerson Polytechnic U)			
	Australia (U of Technology, Sydney Exchange / U of Waterloo)			
	Austria (Johannes Kepler U / U of Victoria)			
	China (Hong Kong) (University of Victoria)			
	Czechoslovakia (City University)			
	Germany (Berufsakademie Heidenheim & U of Mannheim / U of Victoria)			
	Germany (Canada-Germany Georgian College / U of Victoria)			
	Japan (U of Fukushima / U of Victoria)			
	New Zealand (Victoria U at Wellington & U of Waikato / U of Victoria)			
	Prague (University of Economics)			
	Singapore (Nanyang Technological U / U of Victoria)			
	Taiwan (National Sun-Yat-Sen U / U of Victoria)			
	United Kingdom (U of Brunel, U of East Anglia & U of Surrey / U of Victoria)			
Multilateral Exchange	International Volunteer Exchange Program of the Mennonite Central Committee of Canada (IVEP)	18-30 years of age	employer specific	12 months
Multilateral Exchange	International Rural Exchange (IRE)	18-30 years of age	employer specific	6 to 12 months
Multilateral Exchange	SWAP (see table below)	18-30 years of age or to 35 depending on country	open	6 or 12 months

Note: All C21 programs are fee exempt.

Note: When issuing an open work permit, if the applicant has not passed an immigration medical examination, an occupation restriction must be specified. Once the applicant has completed the medical requirements, the condition can be removed.

SWAP Working Holidays (formerly Student Work Abroad Programs) is an activity of the Canadian Federation of Students. SWAP sends Canadians overseas and hosts foreign participants in Canada. The website is located at www.swap.ca.

Country	Age	Student Status	Type of work permit	Maximum validity period
Argentina	18-35	yes	open	12 months
Australia	18-30	no	open	24 months
Austria	18-35	yes	open	12 months
Brazil	18-35	yes	open	12 months

Chile	18-35	no	open	12 months
Costa Rica	18-35	yes	open	12 months
Czech Republic	18-35	no	open	12 months
Denmark	18-35	yes	open	12 months
Dominican Republic	18-35	yes	open	12 months
Finland	18-35	yes	open	12 months
Germany	18-35	no	open	12 months
Ireland (WHP)*	18-35	no	open	12 months
Ireland student*	18-35	yes	open	12 months
Italy	18-35	yes	open	12 months
Mexico	18-35	yes	open	12 months
Netherlands	18-35	no	open	12 months
New Zealand	18-30	no	open	12 months
Peru	18-35	yes	open	12 months
Poland	18-35	yes	open	12 months
Russia	18-35	yes	open	12 months
Slovak Republic	18-35	yes	open	12 months
South Africa	18-30	no	open	12 months
United Kingdom (WHP)**	18-35	no	open	12 months
United Kingdom Student **	18-35	yes	open	12 months
United States***	18-30	yes	open	6 months

Note: Where STUDENT STATUS is a requirement, candidates must be enrolled in full-time post-secondary study. Final year students not returning to studies are also eligible, as are GAP year students from the UK.

*** Please note that all Irish students and WHP participants are also SWAP participants. Irish students that participated in the "student stream" are fully eligible to apply for the WHP after returning to Ireland for a non-specified minimum period.**

**** All but a few British WHP and student participants are also on SWAP and UK students may repeat the WHP after a non-specific minimum period back in the UK.**

***** U.S. students are permitted to repeat SWAP in Canada after another academic term in the U.S.**

Formal Bilateral Arrangements between Canada and the following countries:

Country	Working Holiday Program (WHP)	Young Professionals/ Young Workers	Co-operative Education work placement*
Australia	X	X	X
Austria		X	
Belguim	X		
Chile	X	X	X
Czech Republic	X	X	X
Denmark	X		
France	X	X	X
Germany	X	X	X
Ireland	X		
Italy	X		
Japan	X		
Korea	X		
Latvia	X	X	X
Netherlands	X	X	
New Zealand	X		
Norway	X	X	X
Sweden	X	X	X
Switzerland		X	X
United Kingdom	X	X	X

* In some countries this can be labelled internship, traineeship or practicum. The difference between this and column two is that the participant is a registered student in their home country and this is part of their required curriculum.

Appendix F Military Personnel and family members

***Visiting Forces Act* (VFA)**

Examination procedures

Military personnel are exempt from work permits and are to be documented on Visitor records (case type code 12, special program field 047). Conditions of entry should not be imposed upon a member of the visiting force, nor should a definite period of authorized stay be noted on the form.

The member and family members should be authorized to remain in Canada "for duration of status". On FOSS generated documents, the "valid until date" cannot be left blank. A date of three years validity should be entered, however the following statement should be noted in the remarks section: "Additional condition: This document valid for duration of status under *the Visiting Forces Act*".

While exempt from the passport and visa requirements (unless a civilian), military personnel under VFA must be able to produce an identity document and movement orders (e.g., NATO travel order).

Notwithstanding A18(1), officers may choose not to personally examine every individual in a group. The commanding officer may be relied on to identify any individuals who may be inadmissible to Canada. Port managers are encouraged to obtain group lists in advance and take the appropriate action about any inadmissible individuals prior to the arrival of the group. Those with a military base in their area should meet the base commander to ensure that they are aware of the inadmissibility requirements.

NATO

Regular NATO personnel

NATO nations are covered by the Status of Forces Agreement (taken from the *Visiting Forces Act*). Military personnel coming to Canada under NATO, including the civilian component, are exempt from work permits pursuant to R186(d).

Long term personnel

Visitors entering Canada to take employment at certain facilities may be in Canada for many years. Consequently, long-term work permits may be issued. They are exempt from the work permit requirement, but work permits may be issued pursuant to R204, T11.

Military Training Assistance Programme (MTAP)

New member states of the MTAP which have not been designated under the *Visiting Forces Act* are approved on the basis of bilateral MOUs between the Department of National Defence and its counterpart in the MTAP state. The list of MTAP member states is included below.

MTAP participants (both service and civilian) who are not covered by the VFA may be admitted as visitors to follow seminars or short courses, but require a study permit to follow a training program longer than six months. They are subject to normal passport, visa, medical and visa referral requirements, as applicable. Applicants must show evidence of their participation in MTAP at time of application.

Other Canadian military training offered to non-VFA countries

The Department of National Defence offers a variety of International Training Programs (ITP) to foreign militaries outside of MTAP through various elements of the Canadian Forces (CF). ITP may consist of the use of CF training facilities by visiting military personnel or their attendance on CF-run training courses ranging in length from a few days to a year or more. In most cases these training services are sold to the foreign government or provided in exchange for reciprocal training benefits. The provision of ITP is based upon a formal agreement for the provision of

services between the CF and the appropriate military authority of the requesting country. These agreements detail the terms, conditions, duration of the training etc. and identify any applicable existing bilateral agreements. All such international training relationships are subject to Department of Foreign Affairs and International Trade (DFAIT) review through CF international policy offices.

Criteria:

Training participants coming from VFA countries are exempt from the requirement for immigration documentation. Participants coming from non-VFA countries will require a study permit for studies longer than six months and may require a TRV.

Military personnel family members

This group includes family members of foreign military personnel stationed in Canada who themselves are exempt from work permits pursuant to R186(d).

Under the terms of Reciprocal Agreements

Work permit required but LMO exempt under R205(b) - C20. Fee exempt.

Reciprocal agreements covering family members of military personnel are in place with Denmark, France, Germany, Great Britain, the Netherlands, Norway and the United States. Negotiations are in process with other countries that have exchange military personnel in Canada and personnel from those countries may be included in this procedure at a later date.

Family members of military personnel covered by reciprocal arrangements will submit a request for approval to the Director, Protocol and Foreign Liaison (DPFL) at National Defence Headquarters in Ottawa (NDHQ), 101 Colonel By Drive, Ottawa, ON K1A 0K2. Fax (613) 995-1288. The request should clearly state under which defence program the spouse or parent is employed in Canada. Current programmes are as follows:

a) Exchange and Liaison Program;

b) British Army Training Unit Suffield (BATUS);

c) British Army Training Support Unit Wainwright (BATSUW);

d) Foreign Forces in Goose Bay;

e) NATO Flying Training in Canada Program (NFTC) in Moose Jaw and Cold Lake.

DPFL will forward the request to the appropriate directorate in NDHQ which administers the program, who will review the request and issue a letter granting approval in principle if the family member is eligible and a reciprocal arrangement exists.

If such approval is given, the family member may approach CIC directly and request a work permit (R199). If the principal applicant is under the *Visiting Forces Act*, the work permit is fee exempt. Case type code 22, “official status”.

The family member should be in possession of a ‘letter of approval of employment’ from the applicable DND official, acceptable proof of identity and relationship to the head of family and proof of the duration of the official assignment in Canada.

An open work permit may be issued, for a duration to coincide with the expiry of the tour of duty of the military principal applicant. Prior to the issuance of an open/unrestricted work permit, an applicant must meet immigration medical requirements. Conditions as well as a definite period of stay may be imposed on work permits issued to family members, but when needed, an extension of status should not be withheld unnecessarily.

Where no reciprocal agreements exist

Family members of military personnel not covered by a reciprocal arrangement may apply for a work permit in Canada under R199, but an LMO is required.

Note: Spouses of Military personnel may be more easily processed if they qualify under the Spousal Employment Provision for spouses of high skilled workers R205(c), C41.

COUNTRIES DESIGNATED FOR THE PURPOSE OF THE VFA (See IR 1, Section 3)

MTAP COUNTRIES NOT DESIGNATED UNDER THE VFA (as of May 2005)

Argentina

Bosnia-Hezegrovina

Brazil

Burkina Faso

Chile

Croatia

Dominican Republic

Ecuador

Jordan

Kyrgyzstan

Mali

Mexico

Mongolia

Namibia

Paraguay

Peru

Philippines

Rwanda (suspended)

Russia

Senegal

Serbia-Montenegro

South Africa

South Korea (Tier-Two)

Tajikistan

Uruguay

Appendix G North American Free Trade Agreement (NAFTA)

1 INTRODUCTION

1.1 Purpose of this appendix

This appendix contains information on the temporary entry provisions of the North American Free Trade Agreement (NAFTA). General information on examining and processing temporary foreign workers, contained in the main body of this manual, should also be consulted.

Note: The text of the actual agreement is found in part V, Chapter 16, at http://www.international.gc.ca/nafta-alena/chap16-en.asp

1.2 Policy intent

The NAFTA seeks to liberalize trade between the United States, Mexico and Canada and abolish tariffs and other trade barriers. The Agreement opens up the three countries' markets by ensuring that future laws will not create barriers to doing business.

In order for trade to expand, individuals must have access to each other's country to sell, provide goods or services or trade and invest. Chapter 16 of the NAFTA, entitled "Temporary Entry for Business Persons", provides the mechanisms to allow selected categories of temporary workers access to each other's market(s).

Chapter 16 eases the temporary entry of citizens of the United States, Mexico and Canada, whose activities are related to the trade of goods or services, or to investment. The NAFTA is a reciprocal agreement and Canadians will be afforded similar treatment when seeking entry to the U.S. or Mexico. Chapter 16 does not replace, but adds to our existing general provisions. An American or Mexican business person seeking entry to Canada is eligible for consideration under the provisions of the NAFTA, as well as the general provisions which apply to all temporary foreign workers.

1.3 Background

The NAFTA reflects a preferential trading relationship initiated between Canada and the United States under the Free Trade Agreement (FTA) and now expanded to include Mexico. With the coming into force of the NAFTA, the FTA was suspended.

Chapter 16 of the NAFTA is modelled on the FTA and deals only with temporary entry of selected business persons. It has no effect on permanent residence. The Agreement defines temporary entry as entry without the intent to establish permanent residence.

Under the NAFTA, the United States, Mexico and Canada are required to meet a number of obligations. Among them are the publication of a public information booklet on temporary entry under the NAFTA and the provision of statistical information. Given the growing public image of the NAFTA and the importance of sharing information with our NAFTA partners, it is crucial that data entered into FOSS or CAIPS be as accurate and as complete as possible in order to meet our obligations related to statistics.

A trilateral Temporary Entry Working Group, consisting of officials from departments which have an interest in the temporary entry of workers, meets every year to oversee the implementation and administration of Chapter 16 of the NAFTA. The director of Economic Policy and Programs (SSE), Selection Branch (SSD), and U.S. and Mexican immigration officials co-chair this working group. The Working Group is also responsible to develop measures to facilitate temporary entry of business persons on a reciprocal basis.

1.4 What NAFTA does

- NAFTA facilitates temporary entry for business persons who are citizens of the United States, Mexico and Canada and who are involved in the trade of goods or services, or in investment activities.
- NAFTA removes the need for an LMO for all business persons covered by the Agreement.
- In the case of a business visitor, it removes the need for a work permit.
- For professionals and intra-company transferees, it expedites the application process by permitting the issuance of a work permit at the POE.

1.5 What NAFTA does not do

- NAFTA does not assist permanent admission.
- It does not apply to permanent residents of the three countries.
- It does not replace the general provisions dealing with temporary foreign workers.
- It has no effect on universal requirements related to passports and identity documentation, medical examinations and safety and security.
- It does not replace the need for temporary workers to meet licensing or certification requirements respecting the exercise of a profession.
- It does not extend special privileges to spouses and members of the family. Their entry is governed by the provisions of the Immigration and Refugee Protection Act *and the Regulations*.

1.6 Who is covered by NAFTA?

The temporary entry provisions of Chapter 16 of the NAFTA are restricted to citizens of the United States, Mexico and Canada. In the case of the United States, citizens of the District of Columbia and Puerto Rico are covered by the NAFTA; however, citizens of Guam, the Northern Mariana Islands, American Samoa and the United States Virgin Islands are excluded from the NAFTA.

Permanent residents of the three countries are not covered. They are, however, covered by the general provisions governing the temporary entry of temporary foreign workers.

1.7 Regulatory authority

The temporary entry provisions of the NAFTA are to be used in addition to the general entry provisions governing temporary foreign workers. The business visitor category is the same as the generally-applied rule in R186(a) except that the general rule allows for after-lease servicing with the same conditions, while NAFTA is slightly more restrictive and requires a sale. The other three categories of business person are eligible for work permits through R204(a), which exempts from the LMO process persons whose entry is granted pursuant to an international agreement between Canada and other countries. Administrative codes have been assigned to each category.

1.8 Categories of business persons included under the NAFTA

Business persons included in Chapter 16 of the NAFTA are grouped under four categories:

- business visitors;
- professionals;
- intra-company transferees;
- traders and investors.

Business visitors engage in international business activities related to research and design; growth, manufacture and production; marketing; sales; distribution; after-sales service; and general service. These activities reflect the components of a business cycle (see Appendix 1603.A.1 of Chapter 16).

Business visitors are admitted for business purposes under R186(a) and can carry out their activities without the need for a work permit.

Professionals are business persons who enter to provide pre-arranged professional services—either as a salaried employee of a Canadian enterprise, through a contract between the business

person and a Canadian employer, or through a contract between the American or Mexican employer of the business person and a Canadian enterprise. Appendix 1603.D.1 of NAFTA lists more than 60 occupations covered by the Agreement. Professionals enter to provide services in the field for which they are qualified.

Professionals are not subject to an LMO but require a work permit (R204, T23).

Intra-company transferees are employed by an American or Mexican enterprise in a managerial or executive capacity, or in one which involves specialized knowledge, and are being transferred to the Canadian enterprise, parent, branch, subsidiary, or affiliate, to provide services in the same capacity.

Intra-company transferees are exempt from the LMO process but require a work permit (R204, T24).

Traders and investors carry on substantial trade in goods or services between the United States or Mexico and Canada or have committed, or are in the process of committing, a substantial amount of capital in Canada. Traders and Investors must be employed in a supervisory or executive capacity or one that involves essential skills.

Traders and investors are not subject to the LMO process but require a work permit (R204, exemptin codes T21 and T22, respectively) for which they must apply at a visa office before departing for Canada.

1.9 Admission decisions

In assessing applications for temporary entry by citizens of the United States or Mexico, all available mechanisms for temporary entry should be considered. An American or Mexican citizen who is not eligible for entry under the NAFTA may qualify under the general provisions governing temporary workers.

In making admission decisions the overall objectives of the NAFTA which seek to facilitate trade between Canada, the United States and Mexico should be considered.

1.10 NAFTA definitions and interpretations

The following general definitions, contained in Chapter 2 “General Definitions” and Chapter 16 “Temporary Entry for Business Persons” of the NAFTA deal with temporary entry:

business person means a citizen of a Party (a “Party” means the United States, Mexico or Canada) who is engaged in trade in goods, the provision of services or the conduct of investment activities;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or owned by government, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

enterprise of a Party means an enterprise constituted or organized under the law of a Party;

existing **refers to**, for Canada and the United States, the date of entry into force of the FTA (January 1, 1989); while for Canada and Mexico and for the United States and Mexico it is the date of entry into force of the NAFTA (January 1, 1994);

measure includes any law, regulation, procedure, requirement or practice;

Note: Temporary entry means entry into the territory of a Party by a business person of another Party without the intent to establish permanent residence. *This definition is consistent with Canadian immigration law. It is sufficiently flexible to respond to the needs of business persons and it recognizes that the concept of temporary entry cannot, in most situations, be based simply on a specific time limitation. The definition is not to be perceived as being open-ended, nor as a mechanism to circumvent procedures applicable to permanent residence.*

Like many temporary workers, temporary workers admitted under the NAFTA are allowed entry to Canada to work temporarily either in a temporary or permanent position. The NAFTA cannot be used, however, as a means to remain in Canada indefinitely.

1.11 Administrative definitions and interpretations

Labour certification tests - In Canada, this means the HRSDC labour market opinion or LMO of a job offer for a temporary foreign worker. (R203)

Procedures of similar effect - These are administrative or legal requirements related to immigration procedures which may have the result of delaying or preventing a business person from engaging, or continuing to engage, in a covered profession, occupation, or activity. They do not include the immigration procedures established by Canada, the United States or Mexico:

- to implement the provisions of Chapter 16 of the North American Free Trade Agreement; and
- to ensure compliance with general entry requirements relating to public health, safety, and national security.

1.12 Labour dispute

Chapter 16 contains a labour dispute clause which permits an officer to refuse to issue a work permit where the entry of a person would adversely affect the settlement of a strike in progress or the employment of a person involved in the strike.

Article 1603 of the NAFTA states:

> "2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:
> (a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or
> (b) the employment of any person who is involved in such dispute.
> 3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:
> (a) inform in writing the business person of the reasons for the refusal; and
> (b) promptly notify in writing the Party whose business person has been refused entry of the reasons for the refusal."

The provision applies only to NAFTA business persons subject to the requirement for a work permit: professionals, intra-company transferees, and traders and investors.

To comply with Articles1603.3(a) and 1603.3(b) of the NAFTA, officers are required to:

- provide a letter at the time of refusal to the applicant that includes the following information:
  - name and any known address of the business person;
  - citizenship of the business person;
  - date and place of refusal;
  - name and address of prospective employer;
  - position to be occupied;
  - requested duration of stay;
  - reason(s) for refusal;
  - reference to NAFTA provision 1603.2(a) and/or R200(3)(c); and
- inform NHQ by sending an URGENT fax with complete information on the case, including a copy of the above refusal letter and copies of documentation presented by the applicant, to: Director, Economic Policy and Programs (SSE), Selection Branch (SSD), FAX (613) 954-0850. A copy of the fax is to be sent to the Regional Office concerned. NHQ will inform the country of which the business person is a citizen.

2 BUSINESS VISITORS

2.1 What requirements apply to business visitors?

The following requirements apply:

- citizenship of the United States or Mexico;
- business activities as described in Appendix 1603.A.1;
- activities are international in scope;
- no intent to enter the Canadian labour market;
- the primary source of remuneration remains outside Canada;
- the principal place of business remains outside Canada; and
- compliance with existing immigration/admissibility requirements for temporary entry.

2.2 What business activities are covered by Appendix 1603.A.1?

Business activities covered by Appendix 1603.A.1 are activities of a commercial nature which reflect the components of a business cycle:

- research and design;
- growth, manufacture and production;
- marketing;
- sales;
- distribution;
- after-sales service; and
- general service.

Appendix 1603.A.1 of the NAFTA is reprinted in section 2.7. The wording of the Appendix has been modified from the official NAFTA text and explanatory notes added.

Appendix 1603.A.1 is not exhaustive but illustrates the types of activities covered. It is not merely the activities but the requirements for business visitors which must be considered.

Professionals described in **Appendix 1603.D.1** can be admitted under the general service provision of the business visitor category when they are not seeking to enter the labour market and the primary source of remuneration remains outside Canada, in other words, when they meet the Business Visitor criteria. (See section 3.8.)

2.3 Where can a business visitor apply for entry?

Business visitors must apply at a POE in the same manner as persons covered by other paragraphs of R186. An application cannot be made prior to arriving in Canada.

Business visitors can be admitted at the Primary Inspection Line, except persons applying for entry under the after-sales service provision, who must be referred to Immigration Secondary.

2.4 What documentation must a business visitor present to support an application?

A business visitor must provide the following documentation:

- proof of American or Mexican citizenship;
- documentation to support that the purpose for entry, for instance a business activity listed in Appendix 1603.A.1; and
- evidence that the business activity is international in scope and that the person is not attempting to enter the Canadian labour market. The business person can satisfy these requirements by demonstrating that:
  - the primary source of remuneration is outside Canada; and
  - the person's place of business remains outside Canada and the profits of the business are accumulated primarily outside Canada.

In addition to establishing the purpose for entry, the officer should confirm that the applicant retains employment outside Canada (as an employee of an enterprise or as a self-employed individual) and that the primary source of remuneration remains outside Canada. In general, an individual who is to be paid in Canada would be considered to be joining the labour market and could not be admitted as a business visitor. The payment of expenses incidental to the trip is allowed, as is an honorarium.

Typical examples of business activities include, but are not limited to, consultation, negotiation, discussion, research, participation in educational, professional or business conventions or meetings and soliciting business.

As the NAFTA is a facilitative agreement, the applicant should be given every opportunity to establish that the admission criteria for business visitors are being met and to provide any missing documentation by alternative means, such as by fax.

A verbal statement that the business of the applicant is being carried on outside Canada can be acceptable. Alternative indications (business cards, business papers, advertising pamphlets, etc.) may be helpful.

When dealing with applicants for temporary entry under the after-sales service provision of Appendix 1603.A.1, copies of the original sales, warranty or service agreement and extensions of such agreements are needed.

2.5 What documents are issued and can extensions be granted?

- Existing policies and procedures pertaining to the documentation of visitors and to extensions apply.

Because of the nature of the activities of a business visitor, the stay in Canada will usually be short- term.

Business visitors may seek entry to Canada for a number of regular visits related to a specific project. These visits may take place over a period of weeks or months. In these circumstances, consideration should be given to issuing a Visitor Record to facilitate entry and to reduce potential referrals to Immigration Secondary.

Persons admitted under the after-sales service provision for a period (on-the-job) longer than two days must be issued a Visitor Record.

If a Visitor Record is issued, the special program identifier “FTA” or “054” should be used.

- Applications for extension of status should be based on the requirements specified above.

2.6 After-sales service

All persons applying for entry under the after-sales service provision of Appendix 1603.A.1 must be referred to Immigration Secondary.

2.6.1 What requirements apply to after-sales service personnel?

The following requirements apply:

- citizenship of the United States or Mexico;
- purpose of entry is to install, repair, service, or supervise these functions, or train workers to perform services (see section 2.6.2 for definition of ‘Installation’);
- equipment or machinery (including computer software) is commercial or industrial (not household or personal);
- equipment or machinery or computer software was manufactured and purchased outside Canada;
- work is pursuant to original sales contract and any warranty or service agreement incidental (connected) to the sale;
- work is carried out during the validity of any warranty or service agreement or any extensions of same;
- work requires specialized knowledge (which excludes hands-on building and construction work); and
- compliance with existing immigration requirements for temporary entry.

2.6.2 What is after-sales service?

After-sales service includes the installation, or repair, or servicing of commercial or industrial equipment or machinery, or computer software.

Installation includes only setting-up and testing of the commercial or industrial equipment or machinery, or computer software. It does not include operating the equipment or machinery, or computer software for production and excludes hands-on building and construction work. The term installation generally refers to activities which do not include hands-on building and construction work, such as installation of computer software.

2.6.3 Who may enter to perform after-sales service?

- Persons may be granted entry to install, repair and maintain equipment and machinery and computer software or to supervise or train workers performing installation, repair and maintenance of such equipment.
- Entry shall not be granted to any temporary worker who will be performing hands-on building and construction work even if the sales, warranty or service agreement specifies that their services be provided (see section 2.6.4 for information on hands-on building and construction work).
- Persons granted entry to train or to supervise may also train or supervise the workers who are doing the hands-on building and construction work. Supervising and training might occasionally require demonstrating a procedure. A demonstration must not, however, result in the completion of an installation or servicing task, or of part of such task, or in the productive operation of the equipment or machinery.

2.6.4 Who may not enter to perform after-sales service?

- Persons whose activities or services in Canada would constitute hands-on building and construction work may not enter to provide after-sales service. Hands-on building and construction work is not considered to require specialized knowledge (see section 2.6.5 for information on specialized knowledge). Generally the entry of foreign tradespersons in the building and construction industry is subject to an assessment of the availability of domestic labour (an LMO). As part of the LMO process, Service Canada will consult with organized labour prior to making a determination.

- Regardless of the existence of wording in sales, warranty or service agreements that requires company personnel to perform the installation or servicing, entry should not be granted when personnel will be performing hands-on building and construction work.

Building and construction work includes installing, maintaining and repairing:

- utility services;
- any part of the fabric of any building or structure; or
- machinery, equipment or structures within a building.

Building and construction work includes activities normally performed by (but not limited to):

- labourers;
- millwrights;
- heat and frost insulators;
- bricklayers;
- carpenters and joiners;
- electrical workers;
- operating engineers (includes heavy equipment operators);
- elevator constructors;
- sheet metal workers;
- teamsters;
- boilermakers;
- residential, commercial or industrial painters (including the application of all surface coatings no matter how applied);

- bridge, structural and ornamental ironworkers;
- plumbers and pipefitters;
- roofers;
- plasterers and cement masons.

Building and construction work includes work involving:

- assembly lines;
- conveyor belts and systems;
- overhead cranes;
- heating, cooling, and ventilation or exhaust systems;
- elevators and escalators;
- boilers and turbines; and
- dismantling or demolition of commercial or industrial equipment or machinery, whether on-site or in-plant.

Also, persons are not covered by this provision if they are seeking entry to engage in site preparation work, services installation (for example, electricity, gas, water) and connection of the commercial or industrial equipment or machinery to such services.

2.6.5 What requirements apply to a person seeking entry to provide after-sales service?

The person seeking entry must possess specialized knowledge essential to the seller's contractual obligation.

"Specialized knowledge" is considered to be a very high degree of knowledge only given to an already skilled person through extensive training. In determining whether the person possesses specialized knowledge, the following factors should be considered:

- the skill and/or knowledge level necessary to perform the proposed activity in Canada (i.e., the services to be provided must require the use of specialized knowledge which generally excludes hands-on building and construction work);
- the high level of skill or knowledge the person possesses as indicated by a relevant post-secondary degree or diploma, or by licensing, certification or accreditation issued by an authoritative body;
- additional training, whether in-class or on-the-job, which is essential for providing the service.

The person must be employed by an enterprise established in the United States or Mexico.

The person's proposed activities in Canada must be supported by clear wording in a sales, warranty or service contract.

2.6.6 What requirements apply to the equipment or machinery, or computer software?

- The equipment or machinery, or computer software must be for use in a commercial or industrial setting. The after-sales service provision does not apply to household or personal goods or appliances.
- The commercial or industrial equipment or machinery or the computer software must have been manufactured outside Canada.
- The commercial or industrial equipment or machinery or the computer software must have been purchased from a manufacturer or distributor located outside of Canada.

Equipment or machinery leased or rented from an enterprise outside of Canada is not covered under the after-sales service provision. For computer software, "purchase" includes a licensing agreement.

The purchase of the equipment or machinery or computer software is usually made by a direct sales transaction between a manufacturer or distributor abroad and an end-user in Canada. However, a sales transaction between a foreign manufacturer and an affiliate (e.g., parent or subsidiary) or an unrelated distributor in Canada, which in turn sells or leases the merchandise to an end-user, is also covered by this provision. In this instance, the Canadian enterprise selling or leasing to the end-user may not be equipped to provide installation or warranty service and relies on the enterprise established in the United States or Mexico to provide such services.

Where lease arrangements are involved, it is the initial cross-border transaction which must have involved a sale. The lease arrangement between the Canadian purchaser and an end user is covered as long the equipment remains the property of the original purchaser and the sales, warranty or service agreement is still in effect.

While NAFTA only provides for after-sales situations, the general provision for business visitors R187, under which this section of NAFTA is implemented) allows individuals to enter pursuant to both sales and lease agreements.

2.6.7 What is third party service?

- Third party service occurs when a seller located outside Canada (in the United States or Mexico or in another country) contracts the after-sales servicing to another firm (a third party). The third party must be established in the United States or Mexico.

- There must be clear wording in the sales agreement that specifies that a third party will perform the installation, warranty or service work. Unless such wording exists, there is no evidence that the third party service is incidental to the sale. However, the firm need not be named in the agreement, as it may take some time for the firm to be identified.

2.6.8 What documentation must the person present to support the application?

A person must present the following documentation:

- proof of American or Mexican citizenship; and
- copies of the original sales agreement, and warranty or service agreement, including extensions, which clearly support the purpose of entry.

The warranty or service contract must be incidental to, or connected to the sale of commercial or industrial equipment or machinery, including computer software.

It does not mean that a warranty or service agreement must have the same date as the sales agreement. Particularly with third party service, it may take a number of months after the sale before the company installing or servicing the machinery is identified and sub-contracted.

The initial warranty or service agreement may be extended provided that the sales agreement, or initial warranty or service agreement contained a provision allowing for the extension. The after-sales service, therefore, continues to be contracted as part of the sale of the equipment or machinery, or computer software.

2.6.9 What if a person is unable to provide documentation?

- Before refusing entry based on the lack of documentation, every effort should be made to allow documentation to be provided (e.g., by fax) from the company in Canada or the person's employer in the United States or Mexico.

The requirement for documentation has been imposed in order to clearly establish that the proposed activity is incidental or connected to the sale of the equipment or machinery or computer software. The other parties to the agreement impose the same requirements.

2.6.10 Does the NAFTA affect any requirements for licensing or certification with respect to installation and servicing activities?

- No. The NAFTA does not relieve after-sales service personnel, or any other business person, from the obligation to comply with municipal, regional, provincial, or other federal requirements where these apply.

- The grant of entry indicates only that the person complies with the requirements of the Act and Regulations and with the provisions of Chapter 16 of the NAFTA.

2.6.11 When should a Visitor Record be issued to a person entering to perform after-sales service?

Where entry is sought for a period (on-the-job) of longer than two days, a Visitor Record is to be issued to after-sales service personnel. The Visitor Record should be notated “no hands-on work allowed” and be coded FTA or 054.

A Visitor Record serves to facilitate and to control. It is a useful mechanism for providing information to the person entering concerning the activities that are allowed in Canada. The location(s), as well as the name of the company in Canada, should be indicated on the document.

2.7 Appendix 1603.A.1 - Business visitors (Amended)

(Amended to include interpretive notes - the official text of Appendix 1603.A.1 is available at http:// www.dfait-maeci.gc.ca/nafta-alena/agree-e.asp.)

The term “commercial transaction”, found in some provisions in Appendix 1603.A.1 may be described as any act, within the confines of the law, which is performed expressly to derive a profit. A “commercial transaction” refers only to discussions and negotiations respecting the sale, purchase, marketing, distribution, advertisement, procurement, transmission, transportation or packaging of goods or services.

Research and Design

Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the United States or Mexico.

Growth, Manufacture and Production

Harvester owner supervising a harvesting crew admitted under applicable law.

Note: *“Harvester” refers to a machine used for gathering agricultural crops, such as, grains, fruits and vegetables.*

Note: *“Supervising” does not include hands-on work.*

Note: *“Applicable law” refers to Human Resources Centre validation and work permit documentation.*

Purchasing and production management personnel conducting commercial transactions for an enterprise located in the United States or Mexico.

Marketing

Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the United States or Mexico.

Trade fair and promotional personnel attending a trade convention.

Note: *Where the business of the convention involves sales rather than simple promotion, the provisions under Sales apply.*

Note: *Organizers of trade fairs whose exhibitors are wholly of American or Mexican origin may be granted entry under this provision.*

Sales

- Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the United States or Mexico but not delivering goods or providing services.

Note: *Sales representatives and agents cannot sell Canadian-made goods or services provided by a Canadian.*

Note: *This provision allows persons to sell to the general public, provided that the goods or services are not delivered or available to the buyer at the time of sale (on the same business trip). The seller may only take orders for the goods or enter into contracts for the services.*

- Buyers purchasing for an enterprise located in the United States or Mexico.

Distribution

- Transportation operators transporting goods or passengers to Canada from the United States or Mexico, or loading and transporting goods or passengers from Canada, with no unloading in Canada, to the United States or Mexico.

- In the NAFTA, a "transportation operator" means a natural person [human being as opposed to a corporate "person" (company)], other than a tour bus operator, including relief personnel accompanying or following to join, necessary for the operation of a vehicle for the duration of a trip. (See the General Service provision for information on tour bus operators.)

- This provision includes those persons necessary for the operation of a land transportation conveyance used to transport goods and/or passengers. Persons covered by the provision include the driver and other persons on the vehicle providing services that support the moving operation of the vehicle (for instance, persons providing services to passengers and persons providing services necessary for the movement of the conveyance).

- The parties to the NAFTA have agreed that while pilot car drivers cannot be defined under the Distribution provision of Appendix 1603.A.1., their entry should nonetheless be facilitated. Persons operating highway pilot cars (vehicles leading and following other vehicles transporting over-size loads or hazardous cargo) can be admitted as a member of a crew, pursuant to R186(s).

- Taxi-drivers and passenger-van operators may enter to pick-up passengers for delivery to the United States pursuant to an oral or written contract for services, provided that all passengers picked up are disembarked only in the United States.

- Although truck drivers involved in international hauling of goods should not normally become involved in the loading or unloading of cargo, there are instances where it is acceptable (e.g., in non-warehouse situations and for cargo such as furniture, chemicals, livestock and building materials). Thus, in special circumstances, particularly involving load safety, the provision also allows the driver, including a relay driver, and the other persons described to participate in the loading and unloading of goods.

- The provision does not apply to a person whose only or main job duty is to load or unload the vehicle. Thus, the "crew" of a moving van, other than a driver, is not covered. Nor is a helper on a delivery truck covered by the provision (for instance, a helper on a truck delivering large appliances from a store in an American border town to a Canadian customer).

- An American or Mexican truck driver may load goods in the United States or Mexico, then deliver partial loads at several locations in Canada. An American or Mexican driver may also pick-up goods in Canada at one or more locations and take them to the United States or Mexico. The American or Mexican driver may combine any or all of these pick-ups and deliveries in one trip as long as the goods picked up in Canada have a final destination in the United States or Mexico and are not delivered to another Canadian location. Cabotage, which is pick-up and delivery of the same goods between one location in Canada and another, is not allowed.

- A bus driver may transport passengers in the same way that truck drivers may transport goods. As long as the trip originates or terminates in the United States or Mexico, the bus driver may take the bus to one or several Canadian locations and disembark or board passengers along the way as long as no individuals both join and leave the bus while it is in Canada.

- Relay drivers (drivers who drive a portion or portions of a route) are also covered by this provision. A relay truck or bus driver need not enter Canada on the truck or bus. A relay driver may enter Canada within a reasonable time before or after the truck or bus enters.

United States customs brokers entering Canada to perform brokerage duties relating to the export of goods from Canada to or through the United States.

Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

Note: *This provision covers American and Mexican customs brokers travelling to Canada to consult and not to provide brokerage services.*

After-sales service

Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside Canada, during the life of the warranty or service agreement.

General service

Professionals engaging in a business activity at a professional level in a profession set out in Appendix 1603.D.1.

Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the United States or Mexico.

Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the United States or Mexico.

Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

Note: *"Business associates" refers to colleagues or clients.*

Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the United States or Mexico.

Note: *Tourism personnel and tour participants must congregate at a point in the United States or Mexico and travel as a group when entering Canada. Tourism personnel wishing to use Canada as a base and seeking entry to conduct tours from within Canada are subject to the LMO process.*

Tour bus operators entering Canada:

- with a group of passengers on a bus tour that has begun in, and will return to the United States or Mexico;
- to meet a group of passengers on a bus tour that will end, and the predominant portion of which will take place, in the United States or Mexico; or
- with a group of passengers on a bus tour to be unloaded in Canada, and returning to the United States or Mexico with no passengers, or reloading with the group for transportation to the United States or Mexico.

Note: In the NAFTA, a "tour bus operator" means a natural person, including relief personnel accompanying or following to join, necessary for the operation of a tour bus for the duration of a trip.

Note: A foreign tour bus operator may be admitted as a business visitor for a tour of one or several Canadian locations as long as the trip originates and/or terminates in the United States or Mexico. While passengers may be boarded or dropped at a location in Canada, no individuals may both join and leave the bus while it is in Canada.

Note: If a tour originates in Canada (i.e., a bus enters Canada to pick up passengers), the predominant portion of the tour must then take place in the United States or Mexico in order to preserve the international nature of the tour. Passengers may be returned to Canada following the tour which has taken place predominantly in the U.S. or Mexico.

Note: Tours that originate in Canada and take place predominantly in Canada, with a minimum time spent in the U.S. or Mexico, do not qualify under NAFTA even if the bus crosses the international boundary during the course of the tour. Operators of such a tour would not be admissible as "business visitors".

Note: As well, foreign tour bus operators and transportation operators are still prohibited from conducting "point to point" service (i.e., "cabotage") within Canada - e.g., they cannot pick up passengers in Canada when the final destination of those passengers is another location in Canada. For instance, while an American tour bus operator is allowed to pick up from and return passengers to Canada, specifically for a tour which will take place predominantly in the U.S., the tour bus operator cannot pick up and drop off additional passengers in Canada on his way to the U.S. or when returning from the U.S. following the tour.

Note: Relay drivers (drivers who drive a portion or portions of a route) are also covered by this provision. A relay tour bus driver need not enter Canada on the tour bus. A relay driver may enter Canada within a reasonable time before or after the tour bus enters.

- Translators or interpreters performing services as employees of an enterprise located in the United States or Mexico.

3 PROFESSIONALS

3.1 What requirements apply to professionals?

The following requirements apply:

- citizenship of the United States or Mexico;
- profession identified in Appendix 1603.D.1;
- qualification to work in that profession;
- pre-arranged employment with a Canadian employer;
- provision of professional level services in the field of qualification as indicated in the Appendix; and
- compliance with existing immigration requirements for temporary entry.

3.2 What is Appendix 1603.D.1?

Appendix 1603.D.1, a list of over 60 occupations, is the mechanism by which selected professionals can enter Canada to provide their services.

The Appendix is a complete list and cannot be interpreted. Generally, if an occupation does not appear on the list, it is not a profession as defined by Appendix 1603.D.1. However, officers should allow for alternative job titles in instances where the job duties are interchangeable. This can be confirmed by referring to the National Occupational Classification (NOC) at http://www23.hrdc-drhc.gc.ca/2001/e/generic/welcome.shtml.

The footnotes contained in Appendix 1603.D.1 form part of the Appendix as it appears in the NAFTA. Notes in italics were added to assist officers in understanding the requirements for the Professionals category generally and some individual professions (e.g., management consultant).

The Minimum Education Requirements and Alternative Credentials indicated for each profession are minimum criteria for entry and do not necessarily reflect the educational requirements, accreditation or licensing necessary to practice a profession in Canada.

Professionals can also be admitted as business visitors (General Service provision of Appendix 1603.A.1) when they are not seeking to enter the labour market (meet criteria applicable to business visitors) but will be performing activities such as soliciting business, consulting, providing advice and meeting clients.

3.3 Where can a professional apply for a work permit ?

Facilitated entry under the NAFTA allows a Professional to apply at a POE. An application can also be made at a visa office before departing for Canada.

United States and Mexican citizens can also apply for Professional status in Canada, having been admitted as temporary residents R199.

3.4 What documentation must a professional present to support an application?

A professional must present the following documentation:

- proof of American or Mexican citizenship;
- confirmation of pre-arranged employment provided by:
  - a signed contract with a Canadian enterprise, or
  - evidence of an offer of employment from a Canadian employer, or
  - a letter from the American or Mexican employer on whose behalf the service will be provided to the Canadian enterprise;
- documentation which provides the following information:
  - the proposed employer in Canada;
  - the profession for which entry is sought;
  - details of the position (title, duties, duration of employment, arrangements as to payment; and
  - the educational qualifications or alternative credentials required for the position; and
- evidence that the person has at least the Minimum Education Requirements and Alternative Credentials listed in Appendix 1603.D.1 (copies of degrees, diplomas, professional licences, accreditation or registration, etc).

Employment in the Professionals category must be pre-arranged with the Canadian employer. In this context, the Canadian employer may be an enterprise as defined in section 1.10 or an individual. The following are examples of pre-arranged services and do not preclude other arrangements as long as the professional is not self-employed in Canada:

- an employee-employer relationship with a Canadian enterprise; or
- a contract between the professional and a Canadian enterprise; or
- a contract between the professional's American or Mexican employer and a Canadian enterprise.

The Professionals category does not allow self-employment in Canada (i.e., "hanging-out a shingle" to solicit business in the Canadian labour market). A person who wishes to be self-employed in Canada should consider making an application under another category such as Trader or Investor. However, an American or Mexican citizen who is self-employed outside Canada is not barred from the Professional category, provided the services to be rendered in Canada are pre- arranged with a Canadian employer.

The Canadian employer must be separate from the applicant seeking entry as a Professional. This means that if the Canadian enterprise offering a contract or employment to the applicant is a sole proprietorship operated by that applicant, then entry cannot be granted under the Professionals category; further if the Canadian enterprise is legally distinct from the applicant (i.e., a corporation with a separate legal entity) but is substantially controlled by the applicant, entry as a Professional must also be refused.

In order to determine if an enterprise is substantially controlled, the following factors must be taken into account:

- whether the applicant has established the business;
- whether the applicant has primary, sole, or *de facto* control of the business;
- whether the applicant is the primary, sole, or *de facto* owner of the business;
- whether the applicant is the primary, sole, or *de facto* recipient of income of the business.

When a professional applies for a renewal of a work permit, the following activities may indicate that the individual has been self-employed in Canada:

- incorporation of a company in Canada expressly for the purpose of the business person being self-employed (incorporating does not automatically signify self-employment; the motives for incorporation need to be examined before making a determination);
- initiation of communications (e.g., "job hunting" by direct mail or by advertising);
- responding to advertisements for the purpose of obtaining employment or contracts; or
- establishing an office which serves as a way to advertise (i.e., a "sign or a shingle" outside the door).

The following activities do not constitute self-employment:

- responding to unsolicited inquiries about service which the professional may be able to perform; or
- establishing an office from which to deliver pre-arranged service to clients.

A professional must be entering Canada to provide professional level services in the field of qualification: That is, the professional must be entering to work in an occupation described in Appendix 1603.D.1, for which they are qualified. In making this determination, both the qualification of the individual and the position in Canada must be considered.

The duties of the profession that the business person intends to practice in Canada must conform to the job duties of the profession. For instance, an accountant must be seeking to enter Canada as an accountant and not as a bookkeeper, which is not an occupation covered in Appendix 1603.D.1. Alternatively, a bookkeeper cannot be admitted to work as an accountant unless the applicant is also qualified as an accountant as indicated in the Minimum Education Requirements and Alternative Credentials of Appendix 1603.D.1. Additionally, an engineer entering Canada to be a corporate executive cannot be admitted under the Professionals category as an engineer, because they are not coming to work in their field of qualification (i.e., engineering).

The applicant must meet the qualifications indicated in the Minimum Education Requirements and Alternative Credentials of Appendix 1603.D.1. These qualifications represent only a minimum to permit entry and do not necessarily indicate the level of qualification required to actually work in that profession in Canada.

It is not the role of immigration to determine whether or not the applicant has the necessary license or registration to practice a profession in Canada. The employer in Canada and the professional are responsible to ensure that such requirements are met before employment commences.

In the case of nurses, however, they are required to hold the appropriate provincial license before they can be granted Professional status. Officers may facilitate their entry (e.g., as a business visitor) to permit them to obtain the appropriate licence, providing they can demonstrate that they have initiated steps towards achieving that objective.

In instances where a baccalaureate degree is required, the degree must be in the specific field or in a closely related field. Baccalaureate degrees (or licenciatura) need not have been obtained in colleges or universities in the United States, Mexico or Canada, whereas post secondary diplomas or certificates should have been earned in one of the three NAFTA countries.

It is possible for a professional to be working in Canada on more than one contract at a time. Information on each employer must be included on the work permit.

3.5 What training functions are permitted for professionals?

Professionals can enter Canada to provide training related to their profession, including conducting seminars.

The training session must be pre-arranged with a Canadian employer and the subject matter must be at the professional level. Entry does not allow seminar leaders to engage in training that is not pre-arranged with a Canadian employer.

The training must form part of the professional training or development of the participants and must be related to their job duties.

3.6 What documents are issued?

Persons who qualify in the Professionals category may issued a work permit pursuant to R204(a), T23.

3.7 How long can a work permit be issued and can it be extended?

Includes update from OB 85.

Initial work permits can be granted for durations of up to three years. .

Extensions can also be issued in increments of up to three years with no limit on the number of extensions providing the individual continues to comply with the requirements for professionals.

Officers must be satisfied that the employment is still "temporary" and that the applicant is not using NAFTA entry as a means of circumventing normal immigration procedures.

3.8 Appendix 1603.D.1 - Professionals (Amended)

Amended to include interpretive notes - the official text of Appendix 1603.D.1 is availabe at: http://www.dfait-maeci.gc.ca/nafta-alena/agree-e.asp

Note: A business person seeking temporary entry under this Appendix may also perform training functions relating to the profession, including conducting seminars. It is to be noted that the subject of the workshop or seminar must be in the field for which professional qualification is held. The workshop or seminar must be for professional training or development purposes related to the occupation or to the job duties of the participants.

Profession	**Minimum education requirements and alternative credentials**
General	
Accountant	Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A. or C.M.A.
Architect	Baccalaureate or Licenciatura Degree; or state/provincial licence. ("State/provincial licence" and "state/provincial/federal licence" mean any document issued by a state, provincial or federal government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.)
Computer Systems Analyst	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years' experience.
	Note: "Post-Secondary Diploma" means a credential issued, on completion of two or more years of post-secondary education, by an accredited academic institution in Canada or the United States.
	Note: "Post-Secondary Certificate" means a certificate issued, on completion of two or more years of post-secondary education at an academic institution, by the federal government of Mexico or a state government in Mexico, an

	academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.
Disaster Relief Insurance Claims Adjuster (claims adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)	Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims
Note: For the purposes of this provision, a disaster shall be an event so declared by the In- surance Bureau of Canada or sub- committee thereof through activating the *Insurance Emergency Response Plan*.	
Economist	Baccalaureate or Licenciatura Degree
Engineer	Baccalaureate or Licenciatura Degree; or state/provincial licence
Forester	Baccalaureate or Licenciatura Degree; or state/provincial licence
Graphic Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Hotel Manager (See note below for further details.)	Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post-Secondary Diploma or Post-Secondary Certificate in hotel/restaurant management, and three years experience in hotel/restaurant management
Note: This provision refers to a management position to which other managers report, e.g., general manager, director. It also refers to specialty managers, e.g., food and beverage managers, convention services managers within a hotel.	
Industrial Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Interior Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Land Surveyor	Baccalaureate or Licenciatura Degree; or state/provincial/ federal licence
Landscape Architect	Baccalaureate or Licenciatura Degree
Lawyer (including Notary in the Province of Quebec	LL.B., J.D., LL.L, B.C.L. or Licenciatura Degree (five years); or membership in a state/provincial bar
Librarian (See note below for the requirements of a librarian.)	M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite)
Note: A librarian must have either: 1. a Master of Library Science degree; or 2. a Bachelor of Library Science and another baccalaureate degree which was necessary to enter the B.L.S. program.	
Management Consultant (See notes below for further details.)	Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of

	specialty related to the consulting agreement
Notes: 1. A management consultant provides services which are directed toward improving the managerial, operating, and economic performance of public and private entities by analyzing and resolving strategic and operating problems. The management consultant does not take part in the company's production but seeks to improve the client's goals, objectives, policies, strategies, administration, organization, and operation. Generally a management consultant is hired on contract to do project work to deal with specific issues or problems. 2. A management consultant may provide the following range of services: • conduct a comprehensive examination of the client's business to isolate and define problems; • prepare a presentation and report all findings to the client; • work with the client to design and implement in-depth working solutions. 3. Management consultants assist and advise in implementing recommendations but do not perform functional/operational work for clients or take part in the company's production. 4. Any training or familiarization that is provided to management and personnel on an individual or group basis: • must be incidental to the implementation of new systems and procedures which were recommended in the management consulting report; • must be performed by permanent (indeterminate) employees of the recommending American or Mexican management consulting firm. 5. Typically, a management consultant is an independent contractor or an employee of a consulting firm under contract to a Canadian client. A management consultant can also occupy a permanent position on a temporary basis with a Canadian management consulting firm.	
Mathematician (including Statistician and Actuary)	Baccalaureate or Licenciatura Degree An Actuary must satisfy the necessary requirements to be recognized as an actuary by a professional actuarial association or society operating the territory of at least one of the Parties
Range Manager/Range Conservationalist	Baccalaureate or Licenciatura Degree
Research Assistant (working in a post-secondary educational institution)	Baccalaureate or Licenciatura Degree
Scientific Technician/ Technologist (See below for further details.)	Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics; and (b) the ability to solve prac tical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research
A business person in this category must be seeking temporary entry to work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics. **Notes:** 1. A baccalaureate degree is not normally held by a scientific technician/technologist; therefore, an applicant must possess the skills noted above. 2. Basic research is theoretical or conceptual and is not conducted with a specific purpose or result in mind. Applied research is conducted with a practical or problem solving purpose in mind. **Additional guidance (as agreed to by all parties of the Working Group, Dec. 2001):**	

Individuals for whom ST/Ts wish to provide direct support *must qualify as a professional in their own right* in one of the following fields: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics.

A general offer of employment by such a professional is not sufficient, by itself, to qualify for admission as a Scientific Technician of Technologist. The offer must demonstrate that the work of the ST/T will be *interrelated with* that of the supervisory professional. That is, the work of the ST/T must be managed, coordinated and reviewed by the professional supervisor, and must also provide input to the supervisory professional's own work.

The ST/T's theoretical knowledge should generally have been acquired through the *successful completion of at least two years of training* in a relevant educational program. Such training may be documented by presentation of a diploma, a certificate, or a transcript accompanied by evidence of relevant work experience.

Use the National Occupational Classification (NOC) in order to establish whether proposed job functions are consistent with those of a scientific or engineering technician or technologist.

Not admissible as ST/Ts are persons intending to do work that is normally done by the construction trades (welders, boiler makers, carpenters, electricians, etc.), even where these trades are specialized to a particular industry (e.g., aircraft, power distribution).

Social Worker	Baccalaureate or Licenciatura Degree
Sylviculturist (including Forestry Specialist)	Baccalaureate or Licenciatura Degree
Technical Publications Writer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Urban Planner (including Geographer)	Baccalaureate or Licenciatura Degree
Vocational Counsellor	Baccalaureate or Licenciatura Degree
Medical/Allied Professional	
Dentist	D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental; or state/provincial license
Dietitian	Baccalaureate or Licenciatura Degree; or state/provincial license
Medical Laboratory Technologist (Canada)/ Medical Technologist (Mexico and the United States) (See note below for further details.)	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Note: A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment or prevention of disease.	
Nutritionist	Baccalaureate or Licenciatura Degree
Occupational Therapist	Baccalaureate or Licenciatura Degree; or state/provincial license
Pharmacist	Baccalaureate or Licenciatura Degree; or state/provincial license
Physician (teaching or research only) (See note below for further details.)	M.D. or Doctor en Medicina; or state/provincial license
Note: Physicians may not enter for the purpose of providing direct patient care. Patient care incidental to teaching and/or research is permissible.	
Physiotherapist/Physical Therapist	Baccalaureate or Licenciatura Degree; or state/provincial license

Psychologist	State/provincial license; or Licenciatura Degree
Recreational Therapist	Baccalaureate or Licenciatura Degree
Registered Nurse (See note below for further details.)	State/provincial license; or Licenciatura Degree
Note: To be admitted as a registered nurse, a licence issued by the province of destination is necessary.	
Veterinarian	D.V.M., D.M.V. or Doctor en Veterinaria; or state/provincial license
Scientist	
Agriculturist (including Agronomist)	Baccalaureate or Licenciatura Degree
Animal Breeder	Baccalaureate or Licenciatura Degree
Animal Scientist	Baccalaureate or Licenciatura Degree
Apiculturist	Baccalaureate or Licenciatura Degree
Astronomer	Baccalaureate or Licenciatura Degree
Biochemist	Baccalaureate or Licenciatura Degree
Biologist (including Plant Pathologist)	Baccalaureate or Licenciatura Degree
Chemist	Baccalaureate or Licenciatura Degree
Dairy Scientist	Baccalaureate or Licenciatura Degree
Entomologist	Baccalaureate or Licenciatura Degree
Epidemiologist	Baccalaureate or Licenciatura Degree
Geneticist	Baccalaureate or Licenciatura Degree
Geologist	Baccalaureate or Licenciatura Degree
Geochemist	Baccalaureate or Licenciatura Degree
Geophysicist (including Oceanogra pher in Mexico and the United States)	Baccalaureate or Licenciatura Degree
Horticulturist	Baccalaureate or Licenciatura Degree
Meteorologist	Baccalaureate or Licenciatura Degree
Pharmacologist	Baccalaureate or Licenciatura Degree
Physicist (including Oceanographer in Canada)	Baccalaureate or Licenciatura Degree
Plant Breeder	Baccalaureate or Licenciatura Degree
Poultry Scientist	Baccalaureate or Licenciatura Degree
Soil Scientist	Baccalaureate or Licenciatura Degree
Zoologist	Baccalaureate or Licenciatura Degree
Teacher	
College	Baccalaureate or Licenciatura Degree
Seminary	Baccalaureate or Licenciatura Degree
University	Baccalaureate or Licenciatura Degree

4 INTRA-COMPANY TRANSFEREES

4.1. What requirements apply to intra-company transferees?

The following requirements apply:

- citizenship of the United States or Mexico;
- employment in an executive or managerial capacity or one involving “specialized knowledge”;
- enterprises in the United States or Mexico and in Canada have a parent, branch, subsidiary or affiliate relationship;
- continuous employment, in a similar position outside Canada, for one year in the previous three-year period; and

- compliance with existing immigration requirements for temporary entry.

4.2. Where can an intra-company transferee apply for a work permit?

Facilitated entry under the NAFTA allows an intra-company transferee to make an application at the POE. An application can also be made at a visa office before departing for Canada.

United States and Mexican citizens can also apply for intra-company transferee status in Canada, having been admitted to Canada as visitors (R199).

4.3. What documentation must an intra-company transferee present to support an application?

An intra-company transferee must present:

- proof of American or Mexican citizenship;
- confirmation that the person has been employed continuously outside of Canada by the enterprise for one year within the three-year period immediately preceding the date of application;
- outline of the applicant's current position in an executive, or managerial capacity or one involving specialized knowledge, i.e., position, title, place in the organization, job description;
- in the case of "specialized knowledge", evidence that the person has such knowledge and that the position in Canada requires such knowledge;
- outline of the position in Canada, i.e., position, title, place in the organization, job description;
- indication of intended duration of stay; and
- description of the relationship between the enterprise in Canada and the enterprise in the United States or Mexico.

Officers may request tangible proof to establish the relationship between the Canadian and American or Mexican organizations.

In order to qualify in the intra-company transferee category, a business enterprise "is or will be doing business" in both Canada and the business person's home country, the United States or Mexico.

Note: "Doing business" means regularly, systematically, and continuously providing goods and/ or services by a parent, branch, subsidiary, or affiliate in Canada and the United States, or Mexico, as the case may be. It does not include the mere presence of an agent or office in Canada or in the United States or Mexico. For instance, a company with no employees which exists in name only and is established for the express purpose of facilitating the entry of intra-company transferees would not qualify.

An applicant seeking entry to open a new office on behalf of the American or Mexican enterprise may also qualify, having established that the enterprise in Canada is expected to support a managerial or executive position or, in the case of specialized knowledge, is expected to be doing business. Factors such as the ownership or control of the enterprise, the premises of the enterprise, the investment committed, the organizational structure, the goods or services to be provided and the viability of the American or Mexican operation should be considered.

Intra-company transferees may be admitted for short term assignments and may divide work between Canada and the U.S. or Mexico.

In assessing an application as an intra-company transferee under the NAFTA, the general provisions which deal with intra-company transferees (R205(a), C12) may also be considered.

4.4. What is an affiliate, a branch, an enterprise, a parent and a subsidiary?

Affiliate means:

- one of two subsidiaries, both of which are owned and controlled by the same parent or individual; or
- one of two legal entities, owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each company.

Branch is an operating division or office of the same organization housed in a different location.

Enterprise is "any entity constituted or organized under applicable law, whether or not for profit and whether privately or publicly owned including any corporation trust, partnership, sole proprietorship, joint venture or other association".

Parent means a firm, corporation or other legal entity which has subsidiaries.

Subsidiary refers to a firm, a corporation, or other legal entity of which a parent owns:

- directly or indirectly, half or more than half of the entity and controls the entity; or
- owns, directly or indirectly, 50% of a 50-50 joint venture and has equal control and veto power over the entity; or
- owns directly or indirectly, less than half of the entity, but in fact controls the entity.

4.5. What is “executive capacity”?

“Executive capacity” refers to a position in which the employee primarily:

- directs the management of the organization or a major component or function of the organization;
- establishes the goals and policies of the organization, component, or function;
- exercises wide latitude in discretionary decision-making; and
- receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

An executive does not generally perform duties necessary in the production of a product or in the delivery of a service.

In smaller businesses, the title of the position may not be sufficient to establish that a position is managerial or executive. For example, an architect who incorporates a business and hires a secretary and a draughtsman is not automatically considered to be holding an executive or managerial position. In order to qualify as a manager or executive as described in the intra-company transferee category, the architect must be engaging in managerial or executive duties rather than purely architectural ones.

4.6. What is “managerial capacity”?

“Managerial capacity” refers to a position in which the employee primarily:

- manages the organization, or a department, subdivision, function, or component of the organization;
- supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- has the authority to hire and fire or recommend those, as well as other, personnel actions (such as promotion and leave authorization); if no other employee is directly supervised, functions at a senior level within the organization hierarchy or with respect to the function managed; and
- exercises discretion over the day-to-day operations of the activity or function for which the employee has the authority.

A first-line supervisor is not considered to be acting in a managerial capacity unless the employees supervised are professional.

A manager does not primarily perform tasks required in production of a product or in the delivery of a service.

In smaller businesses, the title of the position may not be sufficient to establish that a position is managerial or executive (refer to section 4.5, What is “executive capacity”?).

4.7. What is “specialized knowledge”?

“Specialized knowledge” means special knowledge an individual has of a company’s product or service and its application in international markets or an advanced level of knowledge or

expertise in the organization's processes and procedures. (Product, process and service can include research, equipment, techniques, management, or other interests.)

Special knowledge is unusual and different from that found in a particular industry. The knowledge need not be proprietary or unique but uncommon. As a general guide, special knowledge may involve a person's familiarity with a product or service which their company makes. Advanced knowledge is complex - again, not necessarily unique or known only by a few individuals (proprietary), but advanced. An assessment of whether such knowledge exists in Canada is not relevant as the test is whether the applicant possesses such knowledge.

Example: A person who possesses specialized knowledge would usually be in a position critical to the well-being of the enterprise. As well, this knowledge has normally been gained by experience with the organization and used by the individual to contribute significantly to the employer's productivity or well being. Evidence of such knowledge must be submitted by the company.

The use of the term "specialized knowledge" applicable to the after-sales service personnel of the business visitor category (Appendix 1603.A.1) differs. For after-sales service, specialized knowledge reflects special training which raises the level of expertise beyond hands-on building and construction work.

4.8 What documents are issued?

- Persons who qualify as intra-company transferees are to be issued a work permit pursuant to R204, T24.

4.9 How long can a work permit be issued and can it be extended?

A work permit issued at the time of entry can have a maximum duration of three years. However, individuals admitted to Canada to open an office or to be employed in a new office should be issued an initial permit for a maximum period of one year.

Extensions can be granted for a duration of up to two years if the person continues to comply with the requirements for intra-company transferees.

The category of intra-company transferees is the only NAFTA category to have a "cap" imposed on the total duration of employment. The total period of stay for a person employed in an executive or managerial capacity may not exceed seven years. The total period of stay for a person employed in a position requiring specialized knowledge may not exceed five years.

Note: For these cases, a minimum period of one year must pass after the time cap before applicants are eligible to be issued a new work permit in these categories.

Intra-company transferees are not necessarily required to re-locate to Canada, however, they are expected to actually occupy a position within the Canadian branch of the company. There should be a clear employer-employee relationship with the Canadian company, and the Canadian company should be directing the day-to-day activities of the foreign worker. This is especially important for workers working at client sites and not at the parent, branch, affiliate, or subsidiary.

Alternatively, officers should examine whether the applicant might better be classified as a business visitor, which includes provision of after-sales service. (See Business visitors, section 2 of this Appendix.)

Issuance of short-term work permits for specific projects is permissible, whether the project is taking place at the company premises in Canada or at a client site (generally seen as applicable for persons the company needs to transfer for their specialized knowledge). *Long-term* work permits in the intra-company transferee category should not be issued for service personnel living outside Canada whom the company wishes to parachute into a client site of the international company on an as-needed basis.

TRADERS AND INVESTORS

Sections 5 and 6 deal with the traders and investors category. An applicant can be granted trader or investor status, but not both. If an applicant is unsure as to the applicable status or wishes to be considered under both, all sections of the application form must be completed. (Refer to sections 5.2 and 6.2 for information concerning the application form.)

5. TRADERS

5.1. What requirements apply to traders?

The following requirements apply:

- applicant has American or Mexican citizenship;
- enterprise has American or Mexican nationality;
- activities involve substantial trade in goods or services;
- trade is principally between either the United States or Mexico, and Canada;
- position is supervisory or executive, or involves essential skills; and
- compliance with existing immigration requirements for temporary entry.

5.2. Where can a trader apply for a work permit?

An application should be submitted at a visa office.

The Regulations allow a citizen of the United States or Mexico to apply for a work permit either at a POE (R198) or at a visa office. However, due to the complexity of the application and for reasons of client service, program consistency and reciprocity, an application for a work permit for entry as a trader should be submitted at a visa office. Because of reciprocal treatment offered to Canadians, Mexican citizens who are granted temporary resident status can also apply for trader status from within Canada (R199).

A person who wishes to submit an application at a POE is to be counselled to submit the application at a visa office. Upon receiving a request for extension, the file from the issuing office should be requested to compare the original information and documentation with that presented in support of the extension request.

Persons applying for trader status must complete an Application for Trader/Investor Status

(IMM 5321) in addition to the application for a work permit.

5.3. What criteria must be met?

The applicant is an American or a Mexican citizen and the enterprise or firm to which the applicant is coming has American or Mexican nationality.

The applicant may be trading on their own behalf or as an agent of a person or an organization engaged in trade principally between Canada and the United States or Mexico. (The applicant may also be an employee of a person or corporation maintaining Trader status in Canada - see section 5.4)

Note: American or Mexican nationality means that the individual or corporate persons who own at least 50 percent interest (directly or by stock) in the entity established in Canada must hold American or Mexican citizenship. Joint ventures and partnerships are limited to two parties.

In parent-subsidiary situations, the nationality of the corporate entity established in Canada should be looked at.

A letter attesting to ownership from a corporate secretary or a company lawyer may be used in determining nationality.

The place of incorporation of an enterprise is not an indicator of nationality. Nationality is indicated by ownership.

The applicant is seeking temporary entry to carry on substantial trade in goods or services principally between Canada and the United States or Mexico.

“Trade”

“Trade” means the exchange, purchase, or sale of goods and/or services. Goods are tangible commodities or merchandise having intrinsic value, excluding money, securities, and negotiable instruments. Services are economic activities whose outputs are other than tangible goods. Such activities include, but are not limited to:

- international banking;
- insurance;
- transportation;
- communications and data processing;
- advertising;
- accounting;
- design and engineering;
- management consulting; and
- tourism.

“Substantial trade” is determined by the volume of trade conducted as well as the monetary value of the transactions. Proof of numerous transactions, although each may be small in value, might establish the requisite continuing course of international trade. Officers must be satisfied that the business person’s predominant activity in Canada is international trading.

Over 50 percent of the total volume of trade conducted in Canada by the firm’s Canadian office must be between Canada and the United States or Mexico. The duties of an American or a Mexican employee of the Canadian office need not be similarly divided.

Supervisory or executive capacity

- The applicant will be employed in a capacity that is supervisory, or executive or involves essential skills.

The supervisory or executive element of the position must be a principal function. A supervisor is a manager who is primarily responsible for directing, controlling and guiding subordinate employees and who does not routinely engage in hands-on activities. (A first line supervisor would not generally meet these requirements.) An executive is in a primary position in the organization with significant policy authority.

Indicators of supervisory or executive capacity are:

- position title;
- place in the organizational structure;
- job duties;
- degree of ultimate control and responsibility over operations;
- number and skill levels of immediately subordinate employees over whom supervision is exercised;
- level of pay; and
- qualifying executive or supervisory experience.

The size of the Canadian office will dictate which indicators are more significant.

Essential skills or services

Essential skills or services are special qualifications that are vital to the effectiveness of the firm’s Canadian operations. In general, essential skills are possessed by specialists, not ordinary skilled workers. The essential employee is not required to have been previously employed by the American or Mexican enterprise unless the skills required can only be obtained through working for that enterprise.

Officers must be satisfied that, based upon a consideration of the following factors, trader status is warranted:

- the degree of proven expertise of the applicant in the area of specialization;

- the uniqueness of the special skills;
- the function of the job;
- the period of training required to perform the contemplated duties; and
- the salary that the special expertise can command.

An exception to the criterion of essential skills exists for a highly trained technician. A highly trained or specially qualified technician employed by a firm to train or to supervise personnel employed in manufacturing, maintenance and repair functions may be granted trader status even though some manual duties may be performed, provided that the firm cannot obtain the services of a qualified Canadian technician.

The emphasis is on “highly trained.” For example, a qualified technician coming to perform warranty repairs on intricate and complex products sold in trade between Canada and the United States or Mexico can be granted trader status if the employing firm establishes that it cannot obtain the services of a qualified Canadian technician. It is expected that the firm in Canada will, within a reasonable period of time, locate and train a Canadian as a highly skilled technician.

The absence of an effective training program for a Canadian is sufficient reason to refuse repeated requests for an American or a Mexican worker to occupy a position not requiring essential skills.

5.4. What criteria must be met to qualify to bring an employee in trader status?

Criteria applicable to the employer:

To bring an employee to Canada in trader status, the nationality requirement must be met:

- the prospective employer in Canada must be a citizen of the United States or Mexico who is maintaining trader status in Canada; or
- if the prospective employer is a corporation or other business organization, the majority ownership must be held by citizens of the United States or Mexico who, if not residing in the United States or Mexico, are maintaining trader status in Canada.

A citizen of the United States or Mexico who is a permanent resident of Canada does not qualify to bring an employee into Canada under trader status.

Shares of a corporation or other business organization owned by a citizen of the United States or Mexico who is a permanent resident of Canada cannot be considered in determining majority ownership to qualify the company for bringing in an employee as a trader.

Criteria applicable to the employee:

The applicant must be an American or Mexican citizen whose job duties will be in a supervisory or executive capacity or whose skills are essential to the efficient operation of the enterprise in Canada. (Refer to section 5.3 above, dealing with “capacity that is supervisory or executive, or involves essential skills”.)

5.5. What documents are issued?

Persons qualifying in the Trader category may be issued a work permit pursuant to R204; T21 should be used.

5.6. How long can a work permit be issued and can it be extended?

- The initial work permit can have a maximum duration of one year.
- Extensions should be granted for a duration of two years provided that all requirements described above continue to be met.

An applicant’s expression of a definite intention to return to the United States or Mexico when trader status terminates will normally be accepted as sufficient evidence of temporary intent, unless there are indications to the contrary.

Trader status would end upon the applicant taking another job, engaging in an activity which is not consistent with this status, closing down the business, etc.

6 INVESTORS

6.1 What requirements apply to investors?

The following requirements apply:

- applicant has American or Mexican citizenship;
- enterprise has American or Mexican nationality;
- substantial investment has been made, or is actively being made;
- applicant is seeking entry solely to develop and direct the enterprise;
- if the applicant is an employee, position is executive or supervisory or involves essential skills; and
- compliance with existing immigration measures applicable to temporary entry.

6.2 Where can an investor apply for a work permit?

An application should be submitted at a visa office.

The Regulations allow a citizen of the United States or Mexico to apply for a work permit either at a POE (R198) or at a visa office. However, due to the complexity of the application and for reasons of client service, program consistency and reciprocity, an application for a work permit as an investor should be submitted at a visa office. Because of reciprocal treatment for Canadians, Mexican citizens who are granted visitor status can apply for investor status from within Canada (R199).

A person who wishes to submit an application at a POE is to be counselled to submit the application at a visa office. Upon receiving a request for extension, the file from the issuing office should be requested to compare the original information and documentation with that presented in support of the extension request.

Persons applying for investor status must complete an Application for Trader/Investor status (IMM 5321) in addition to the application for an employment authorization.

6.3 What criteria must be met?

- The applicant is a citizen of the United States or Mexico and the enterprise or firm to which the applicant is coming has American or Mexican nationality.

Note: American or Mexican nationality means that the individual or corporate persons who own at least 50 percent interest (directly or by stock) in the entity established in Canada must hold American or Mexican citizenship. Joint ventures and partnerships are limited to two parties.

In parent-subsidiary situations, officers should consider the nationality of the corporate entity established in Canada.

A letter attesting to ownership from a corporate secretary or a company lawyer may be used in determining nationality.

The place of incorporation of an enterprise is not an indicator of nationality. Nationality is indicated by ownership.

- The applicant is seeking temporary entry solely to develop and direct the operations of an enterprise in which the applicant has invested, or is actively in the process of investing, a substantial amount of capital.

Note: This criterion does not apply to an employee of an investor.

“Develop and direct“ means that the applicant should have controlling interest in the enterprise. An interest of 50 per cent or less usually will mean that the applicant does not have requisite control, particularly in smaller enterprises. An equal share of the investment, such as an equal partnership, generally does not give controlling investment in Canadian-based corporations. However, in cases of American and Mexican corporate investment in Canadian-based corporations, the focus should be less on an arithmetical formula and more on corporate practice,

since control of half or less of the stock sometimes gives effective control. A joint venture may also meet the "develop and direct" requirement, provided that the American or Mexican corporation can demonstrate that it has, in effect, operational control.

Investment involves placing funds or other capital assets at risk in the commercial sense in the hope of generating a profit or a return on the funds risked. If the funds are not subject to partial or total loss if investment fortunes reverse, then it is not an investment which can be used to support investor status. (Investor status could not, therefore, be extended to non-profit organizations).

If the applicant is in the process of investing, mere intent to invest or prospective investment arrangements entailing no present commitment will not suffice. The applicant must be close to the start of actual business operations, not merely in the stage of signing contracts (which may be broken) or scouting for suitable locations and property. The investment funds must be irrevocably committed to the business.

Whether an investment has been, or will be made, the applicant must demonstrate prior or present possession and control of the funds or other capital assets.

Officers should assess the nature of the transaction to determine whether a particular financial arrangement may be considered an investment for the purpose of investor status. Following are some factors which may be considered in making a determination:

- Funds - Mere possession of uncommitted funds in a bank account would not qualify, whereas, a reasonable amount of cash held in what is clearly a business bank account or similar fund used for routine business operations may be counted as investment funds.

- Indebtedness - Mortgage debt or commercial loans secured by the enterprise's assets cannot count toward the investment as there is no requisite element of risk. Loans secured by the applicant's own personal assets, such as a second mortgage on a home, or unsecured loans, such as a loan on the applicant's personal signature, may be included since the applicant risks the funds in the event of business failure.

- Lease/rent payments - Payments in the form of leases or rents for property or equipment may be calculated toward the investment in an amount limited to the funds devoted to that item in any one month. However, the market value of the leased equipment is not representative of the investment and neither is the annual rental cost (unless it has been paid in advance) as these rents are generally paid from the current earnings of the business.

- Goods/equipment as investment - The amount spent for purchase of equipment and for inventory on hand may be calculated in the investment total. The value of goods or equipment transferred to Canada (such as factory machinery shipped to Canada to start or enlarge a plant) is considered an investment provided the applicant can demonstrate that the goods or machinery will be put, or are being put, to use in an ongoing commercial enterprise.

There is no minimum dollar figure established for meeting the requirement of "substantial" investment. Substantiality is normally determined by using a "proportionality test" in which the amount invested is weighed against one of the following factors:

- the total value of the particular enterprise in question (determining proportion is a largely straightforward calculation involving the weighing of evidence of the actual value of an established business, i.e., purchase price or tax valuation, against the evidence of the amount invested by the applicant); or

- the amount normally considered necessary to establish a viable enterprise of the nature contemplated. (This may be a less straightforward calculation. Officers will have to base the decision on reliable information on the Canadian business scene to determine whether the amount of the intended investment is reasonable for the type of business involved. Letters

from chambers of commerce or statistics from trade associations may be reliable for this purpose.)

Only the amount already invested or irrevocably committed for investment can be considered in determining substantiality.

The investment must be significantly proportional to the total investment. The total investment is the cost of an established business or money needed to establish a business. In businesses requiring smaller amounts of total investment, the investor must contribute a very high percentage of the total investment, whereas in businesses of larger total investment, the percentage of the investment may be much less. In applying the test, officers must first focus on the nature of the business to determine reasonably the total amount of investment needed to establish such business.

Clearly, the total amount of money needed to start a consulting service will be much less than to open an automobile manufacturing plant or even a restaurant. In the case of a consulting firm, it might be found that a total of $50,000 investment is necessary to become fully operational. In order to qualify as an investor, an applicant would have to invest a high percentage of the $50,000. For a total investment of $1 million, the investor might reasonably have to invest at least $500,000 to $600,000; whereas for a $10 million manufacturing plant, $2-3 million might suffice, based on the sheer magnitude of the dollar amount invested. (These examples are not intended to establish any set dollar figures, but are used only to demonstrate by example the application of the proportionality test.)

The enterprise must be a real and active commercial or entrepreneurial undertaking which operates to produce some service or commodity for profit. It cannot be a paper organization or an idle, speculative investment held for potential appreciation in value. For instance, passive investment in developed or undeveloped real estate or stocks does not qualify. (Evidence that an applicant intends and has the ability to invest additional funds in the future in an enterprise may demonstrate that the business is, or will be, a viable commercial enterprise. A plan for future investment, expansion, and/or development is significant in meeting this criterion.)

The objective of investor status is to promote productive investment in Canada. Therefore, an applicant is not entitled to this status if the investment, even if substantial, will return only enough income to provide a living for the applicant and family.

There are various ways to assist in determining whether an enterprise is marginal, in the sense of only providing a livelihood for the applicant. For instance, an applicant may show that the investment will expand job opportunities locally or that it is adequate to ensure that the applicant's primary function will not be that of a skilled or unskilled labourer. If the applicant has substantial income from other sources and does not rely on the investment enterprise to provide a living, the investment may be one of risk and not one of providing a mere livelihood. Therefore, the investment would not be in the marginal category.

6.4 What criteria must be met to qualify to bring an employee to Canada in investor status?

Criteria applicable to the employer

To bring an employee to Canada in investor status, the nationality requirement must be met:

- the prospective employer in Canada must be a citizen of the United States or Mexico who is maintaining investor status in Canada; or

- if the prospective employer is a corporation or other business organization, the majority ownership must be held by citizens of the United States or Mexico who, if not residing in the United States or Mexico, are maintaining investor status in Canada.

A citizen of the United States or Mexico who is a permanent resident of Canada does not qualify to bring an employee into Canada under investor status.

Shares of a corporation or other business organization owned by a citizen of the United States or Mexico who is a permanent resident of Canada cannot be considered in determining majority ownership to qualify the company for bringing in an employee as an investor.

Criteria applicable to the employee

The applicant must be an American or Mexican citizen who qualifies in a supervisory or executive capacity or possesses skills essential to the firm's operations in Canada.

The supervisory or executive element of the position is a primary function. The supervisor is primarily responsible for directing, controlling and guiding subordinate employees and does not routinely engage in hands-on activities. (A first line supervisor would not, as a general rule, qualify). An executive or manager is in a position in the organization with significant policy authority.

Indicators of supervisory or executive or managerial capacity are:

- position title;
- place in the organizational structure;
- job duties;
- degree of ultimate control and responsibility over operations
- number and skill levels of immediately subordinate employees over whom supervision is exercised;
- level of pay; and
- qualifying executive or supervisory experience.

The size of the Canadian office will dictate which indicators are more relevant.

Essential skills or services are special qualifications that are vital to the effectiveness of the firm's Canadian operations over and above qualifications required of an ordinary skilled worker.

An employee with essential skills is not required to have previously worked for the enterprise unless the skills required could only be acquired by working for the enterprise.

Officers must be satisfied that, based upon a consideration of the following factors, investor status is warranted:

- the degree of proven expertise of the applicant in the area of specialization;
- the uniqueness of the special skills;
- the length of experience and training with the firm;
- the period of training required to perform the contemplated duties; and
- the salary that the special expertise can command.

There are two exceptions to the application of the factors concerning essential skills:

New enterprises

- investor status may be granted to an employee not possessing essential skills when the employee is needed for the start-up of a new enterprise;
- the employee and the company will have to demonstrate need, based upon familiarity with the American or Mexican operations of the firm;
- this provision usually applies where a firm established in the United States or Mexico seeks to use a skilled American or Mexican employee in the early stages of a Canadian investment;
- investor status will normally be granted for a period not to exceed one year;
- this procedure is designed to assist new enterprises to establish themselves and to allow them a reasonable period of time to train a Canadian for a position not requiring essential skills.

Highly trained technicians

- a highly trained or specially qualified technician employed by a firm to train or supervise personnel employed in manufacturing, maintenance and repair functions may be granted investor status even though some manual duties may be performed, provided that the firm cannot obtain the services of a qualified Canadian technician;

- the emphasis is on “highly trained”. For example, a qualified technician coming to perform warranty repairs on intricate and complex products sold in trade between Canada and the United States/Mexico can be granted investor status if the employing firm establishes that it cannot obtain the services of a qualified Canadian technician. It is expected that the firm in Canada will, within a reasonable period of time, locate and train a Canadian as a highly skilled technician.

The absence of an effective training program for a Canadian is sufficient reason to refuse repeated requests for an American or a Mexican worker to occupy a position requiring high technical skills.

6.5 What documents are issued?

Persons qualifying in the Investor category may be issued a work permit pursuant to R204, T22.

6.6 How long can a work permit be issued and can it be extended?

A work permit issued at the time of entry can have a maximum duration of one year.

Extensions should be granted for a duration of two years provided that the requirements outlined above are met.

An applicant’s expression of a definite intention to return to the United States or Mexico when investor status terminates will normally be accepted as sufficient evidence of temporary intent unless there are indications to the contrary.

Investor status would end upon applicant taking another job, engaging in an activity which is not consistent with this status, closing down the business, etc.

Annex A to Appendix G

THE NORTH AMERICAN FREE TRADE AGREEMENT AND UNIVERSITY, COLLEGE AND SEMINARY TEACHERS

The immigration provisions of the NORTH AMERICAN FREE TRADE (NAFTA) are of particular interest to Canadian, American and Mexican teachers who have been offered temporary appointments at the university, college, and seminary levels. The following is intended to provide information concerning the application of the temporary entry chapter of the NAFTA for university, college and seminary teachers.

1. What are the general principles of the immigration chapter of the NAFTA?

a) It reflects the desirability of facilitating temporary entry on a reciprocal basis for persons whose activity or profession is described in the chapter.

b) It recognizes the need to ensure border security and protect indigenous labour and permanent employment.

2. Does the NAFTA replace previously existing immigration provisions for teachers?

No. The new provisions enhance or expand the general or universal provisions which exist in each country. Thus, for American and Mexican teachers coming to Canada, the NAFTA augments the existing provisions respecting exchange professors, guest lecturers and visiting professors. (See Annex 1 for details of general provisions.)

3. What immigration provisions exist under the NAFTA?

Canadian, American and Mexican teachers can now obtain a document authorizing employment to undertake a temporary appointment at a university, college, or seminary in one of the other

countries simply by presenting at the POE a letter from the employer describing the temporary appointment.

Note: Appendix 1603.D.1 of the NAFTA lists those professions whose members are eligible for facilitated entry to the other countries. Only those activities which are generally understood to be associated with the performance of a profession may be undertaken by a person seeking to enter or to remain in Canada temporarily to practice the profession.

Thus, a person entering to be employed temporarily as a university teacher can carry out the range of duties normally associated with that position.

4. Is coverage of the new NAFTA provisions restricted to Canadian, American and Mexican citizens?

Yes. Persons who are not citizens but have immigration status as a legal permanent resident of the other countries do not have access to facilitated entry under the NAFTA. They do, however, continue to have access to each country through existing general or universal provisions governing the entry of temporary foreign workers.

5. Does the NAFTA facilitate permanent admission to Canada, the United States or Mexico?

No. The immigration chapter of the NAFTA covers temporary entry only.

6. What is 'temporary entry'?

The NAFTA defines "temporary entry" as "...entry without the intent to establish permanent residence." This definition is consistent with immigration law. It is adaptable to individual circumstances and it recognizes that the concept of temporary entry cannot be based simply on a specific time limitation.

The definition does not allow for open-ended temporary entry. The provisions of the NAFTA cannot be used as a mechanism to circumvent procedures applicable to permanent employment nor as a means to establish *de facto* permanent residence.

Upon arrival at a POE, a work permit may be granted for the length of the contract up to a maximum of twelve months. If the appointment is for a period greater than twelve months, a renewal of the work permit must later be requested and obtained. (A person who is in possession of a valid work permit is eligible to apply for a renewed work permit, and should apply at least one month before the expiry of the work permit. An application can be downloaded from CIC's website or from the Call Centre.

Multiple renewals will not be approved routinely even though a lengthy appointment might have been indicated at the time of arrival in Canada. The longer the duration of temporary stay, the greater the onus will be on the individual, especially when requesting an extension of status, to satisfy an officer of temporary intent.

7. Does the NAFTA allow temporary entry to undertake a temporary appointment in a permanent position?

Yes. Many temporary foreign workers in general are authorized to work temporarily in a permanent position that, for one reason or another, is temporarily vacant.

8. Is the LMO procedure for temporary and permanent employment affected by the NAFTA?

The procedures which apply to permanent employment are unaffected by the NAFTA. The advertising procedure required as part of the LMO process continues for permanent appointments.

On the other hand, the NAFTA prohibits, as a condition for temporary entry, "...prior approval procedures, petitions, labour certification tests, or other procedures of similar effect." Service Canada labour certification is, therefore, prohibited for a temporary appointment. A hiring (advertising) process which is independent of a labour certification test or other procedure of similar effect* is permissible for a temporary appointment under the NAFTA.

A university can institute a “Canadians-first”** hiring policy and not be in conflict with provisions of Chapter 16 or any other provisions of the NAFTA. The university would simply be exerting its prerogative as an employer.

Should a decision be made, though, to offer a temporary appointment to a teacher who is a U.S. or Mexican citizen, then that person’s entry to Canada and authorization to work will be facilitated through the provisions of Chapter 16 of the NAFTA.

* A “procedure of similar effect” is an administrative or legal requirement which may have the consequence of delaying or preventing a person covered by Chapter 16 from engaging, or continuing to engage, in a covered profession, occupation, or activity. It does not include the immigration procedures established by Canada, the United States or Mexico: 1) to implement the provisions of Chapter 16 of the NAFTA, 2) to ensure compliance with general entry requirements relating to public health, safety, and national security.

** The term “Canadians-first” refers to citizens and permanent residents of Canada.

9. What happens when a university wishes to turn a temporary appointment under the NAFTA into a permanent appointment?

The university must offer the person permanent/indeterminate employment. The applicant can then apply for permanent residence, and benefit from receiving points for ‘arranged employment’. If they qualify as a skilled worker permanent resident, then a permanent residence visa will be issued.

10. What immigration procedures apply to American or Mexican teachers coming to Canada to undertake temporary appointments?

Teachers require work permits to teach temporarily in Canada at a university, college or seminary. An American or Mexican citizen can apply for a work permit at a Canadian POE and must provide the following documentation:

a) evidence of citizenship (passport or birth certificate);

b) a letter or signed contract from the institution providing full details of the temporary appointment including:

- the nature of the position offered;
- arrangements for remuneration;
- educational qualifications required; and
- the duration of the appointment.

While not mandatory, for the purpose of further facilitating entry at the border, it is recommended that the letter or contract specify that “the offer of employment is for a temporary appointment consistent with the terms of the North American Free Trade Agreement”;

c) evidence that the applicant holds at least a baccalaureate degree.

Applicants must, as well, be able to satisfy an immigration officer of general compliance with the requirements of the *Immigration and Refugee Protection Act* and Regulations, e.g., be in good health and have no criminal record.

Note: There is a $150.00 processing fee for a work permit.

11. What immigration procedures apply to Canadian teachers going to the United States and to Mexico to undertake temporary appointments?

As mentioned earlier, one of the fundamental principles of the immigration chapter of the NAFTA is reciprocity. While the procedures at a United States or Mexican POE may not be exactly the same as ours, Canadians will be subject to exactly the same criteria for facilitated temporary entry under the NAFTA. Canadians should contact a U.S. POE or consulate or Mexican consulate for full details.

12. Can persons who are denied temporary entry under the NAFTA appeal such decisions, and will reasons for denials be given?

The NAFTA contains no provisions for a person to appeal a decision refusing entry because of non- compliance with entry requirements. In the event of a refusal to grant entry, officers will provide reasons for the refusal.

13. Is there a means of assuring that Canadians, Americans and Mexicans are treated equally upon entry to the three countries?

Yes. The immigration chapter of the NAFTA provides for a consultation procedure involving the participation of immigration officials of Canada, the United States and Mexico. In practice these officials meet regularly to harmonize their respective NAFTA procedures and to resolve problems relating to the on-going implementation of the chapter.

LMO EXEMPT CODE (TEACHERS)

Code C22

Persons who are engaged by post-secondary educational institutions (e.g., universities, community colleges and similar institutions) as:

1. exchange professors coming to Canada on a reciprocal basis;

2. guest lecturers who are invited by a post-secondary institution to give a series of lectures which does not comprise a complete academic course and is for a period of less than one academic term or semester;

3. persons coming as visiting professors for a period of not more than two academic years to take a position with a post-secondary institution and who retain their former position abroad (as this does not apply to Summer Student instruction, appropriate terms and conditions should be imposed).

UNIVERSITY TEACHERS

The duties of a university teacher include:

- teaching one or more subjects within a prescribed curriculum;
- preparing and delivering lectures to students;
- conducting seminars or laboratory sessions;
- stimulating and guiding class discussions;
- compiling bibliographies of specialized materials for outside reading assignment;
- preparing and administering examinations and grading answer papers;
- assigning and marking essays;
- directing research programs of graduate students;
- conducting research in a particular field of knowledge, and publishing findings in books or professional journals;
- serving on faculty committees concerned with such matters as curriculum revision, academic planning and degree requirements;
- advising students on academic and other matters;
- assisting students with the conduct of various scholarly, cultural and political clubs or societies;
- providing professional consultative services to government, industry and private individuals;
- attending regional and international conferences dealing with academic specializations; and
- teaching as required in an adult education or university extension program, by means of correspondence courses or night classes.

Teachers at this level usually specialize in one subject, or two or more related subjects.

Appendix H Sales

R187 defines business visitors as those who are not entering the labour market. R187(2)(*c*) gives the specific example of persons selling goods and services, who meet that definition as long as they are not selling to the general public. Potential buyers NOT classified as the 'general public' include wholesalers, retailers, corporations and institutions. Some examples of sales situations are given below:

Sales negotiations

A business visitor may sell, take orders or negotiate contracts for goods (or services) during the same visit to Canada. If, however, the goods are delivered or the services are provided during the same visit to Canada, a work permit is required.

Foreign sales representatives and agents may not sell predominantly Canadian-made goods or services provided by a Canadian without a work permit. The issue of whether the goods are made in Canada or outside relates to the issue of entry into the labour market. If a product is manufactured in Canada, and sold in Canada, there is no reason that a Canadian should not be the one to sell the product. On the other hand, if a product is manufactured in, for example, Africa, and then sold to a Canadian retailer, wholesaler or institution, this would be considered a normal international business practice. A foreign salesperson should be able to sell their products in another country. There is no entry into the labour market. Sales negotiations are considered in the same way; as not entailing entry into the labour market.

Sales to the general public

Persons engaging in regular sales to the general public require a work permit issued on the basis of an LMO.

Direct sales organizations

Direct sales companies such as Amway/Quixstar, Mary Kay or Avon Cosmetics and Homes Interiors & Gifts Company will send individuals to prospect and recruit Canadian salespeople who will sell the company's products. These individuals may enter to give training and motivation sessions, and assist recruits in making their first presentations and sales to Canadian consumers. They may carry with them, when crossing the border, training material, promotional material such as brochures and catalogues, and various samples of the products which are to be used for demonstrations and training purposes only and are not to be sold in Canada. These people may be admitted as business visitors.

R187 allows foreign salespeople to sell products directly, provided that the products are non-Canadian products and that they are not delivered or available to the buyer at the time of the sale (on the same trip); the seller being able only to take orders for the products at the time of the sale.

Conventions

For events held by the following organizations:

- Associations;
- Corporations, and
- Governments.

Events can be one of the following:

- association meetings, conventions and congresses;
- corporate meetings;
- incentive meetings, or
- trade shows, exhibitions and consumer shows.

Canadian Events

A Canadian event is one being held by an organization which is located in Canada. The organization must be actively doing business in Canada.
A Canadian event may be conducted by a branch or subsidiary of a foreign based organization.

Foreign Events

A foreign event is one being held by an organization which is located in a country other than Canada. The organization must conduct its business from a location outside Canada.

Event Planners for a Foreign Organization

Permanent employees of **foreign organizations** planning events in Canada ***do not*** require work permits if they are:

- executive organizing committee members, or
- administrative support staff.

Persons working under contract for ***foreign organizations*** planning events in Canada **do not** require work permits if they are:

- event planners;
- exhibit managers;
- professional conference organizers;
- destination marketing company personnel, or
- event accommodation consultants.

Event Planners for a Canadian Organization

Foreign nationals working under contract for **Canadian organizations** planning events in Canada ***require*** Work permits and an LMO.

Exhibitors

Booth personnel, display stand personnel, and booth owners may enter Canada as business visitors to display or demonstrate goods at an event without work permits.

Selling goods

Exhibitors of all nationalities who want to sell foreign made goods to the **general public** and deliver them at the time of the sale require work permits. Work permits for this purpose are LMO exempt under R205(a) C10 (significant economic benefits). There are benefits deriving from their entry in that they hire Canadian services and purchase accommodations etc.

Exhibitors who are citizens of the U.S. and Mexico who merely take orders for goods from the **general public** that will be delivered to the customer after the seller returns to their home country do not require work permits. They can benefit from treatment as business visitors under NAFTA.

Exhibitors who take orders for foreign made goods on a **business-to-business** basis at trade shows that are attended by corporations, wholesalers, retailers, and institutions do not require work permits. They are considered to be business visitors.

Exhibitors selling **Canadian-made** goods require work permits. Work permits for this purpose require an LMO.

Setting up display

Company employees will require work permits to install and dismantle a booth or display if it is larger than a portable pop-up. Work permits for this purpose do not require an LMO

Contract Service Providers

Foreign service providers who are working under contract for exhibitors require work permits. This includes persons who are involved in activities such as:

- the installation and dismantling of a show or exhibit;
- audio video, staging, or show decorating services, and
- lighting, carpet laying, carpentry, or electrical work.

All foreign service providers working under contract to **Canadian** events require work permits. Work permits for this purpose require an LMO.

Foreign service providers who are supervisory personnel working under contract for **foreign** events require work permits. Work permits for this purpose do not require an LMO, as long as the supervisors will be directing local hires.

Exhibitors are expected to hire Canadians to do all the labour on the convention floor.

Entertainers

Entertainers contracted to work at events do not need work permits if they are performing at venues that are not bars, restaurants, or clubs.

Delegates

Delegates, attendees, and board members are considered to be visitors.

Appendix I Guide to Mergers and Acquisitions

Substantive Issues
Corporate mergers and acquisitions may trigger work permit related issues for foreign workers employed at Canadian target companies.

There are two types of temporary foreign workers employed by Canadian companies and corporate restructurings affect these workers differently:

- **LMO:** issued by Service Canada allowing Canadian employers to hire foreign nationals in a variety of occupations. The LMO application requires the employer to abide by a prevailing wage, specific job location, and specific job duties. Therefore, each LMO is tailored to fit a particular job offer by a particular employer.
- **intra-company transferees:** requires a qualifying corporate relationship between the foreign and Canadian entity. Therefore, if a qualifying relationship ceases to exist in the wake of a corporate restructuring, there is no basis for the emerging Canadian entity to continue to employ a foreign national worker as an intra-company transferee.

Corporate Restructurings
The most common corporate restructurings are acquisitions, mergers, and consolidations:

- **Acquisitions**: the takeover of the controlling interest of one entity by another and both entities retain their legal existence after the transaction.
- **Mergers**: the joining together of two entities into a single entity called a surviving entity; the surviving entity assumes all of the assets and liabilities of the merged entities, i.e. it purchases the stock, assets and liabilities of the other entities, absorbing them into one corporate structure.
- **Consolidations**: the joining together of two or more entities to create a new entity; the new entity assumes the assets and liabilities of the original companies which cease to exist.

The specific characteristics of the restructuring will dictate the resulting action that is required by the employer and the foreign national worker.

The main consideration for workers who require a LMO is whether the employer can be seen to be a “successor in interest” employer, or, in the case of an acquisition, the same employer.

The main consideration for intra-company transferee workers is whether a qualifying relationship continues to exist between the foreign entity and the Canadian entity.

Definition of Employer
An employer can be defined as a person, firm, corporation, contractor, or other association or organization in Canada which:

- Indicates the intention to have an employer-employee relationship with a person who is a temporary foreign worker, and,
- Has an employer-employee relationship with respect to employees, as indicated by the fact that it may hire, fire, pay, supervise, or otherwise control and direct the employee in the material details of how their work is to be performed.

Definition of “Successor in Interest”
To establish a “successor in interest”, the successor entity must demonstrate that it has substantially assumed the interests and obligations, assets and liabilities of the original owner, and continues to operate the same type of business as the original owner.

If some assets or liabilities are not assumed by the successor entity after the corporate restructuring, then the “successor in interest” may not exist. This may occur when a “shelf corporation” is created, and a

minimal asset or liability is left with a corporation. “Shelf corporations” have no activity. It is then usually sold to an individual who would prefer to have an aged corporation rather than a new one. A business entity that is created through a process other than incorporation (such as a limited liability company) is simply called a “shelf company”.

Some economic determinants for the purposes of establishing whether an entity has assumed the required interests, obligations, assets, and liabilities of the previous owner.

Assets include, but are not limited to:
- Current assets, such as cash, short-term investments, receivables, inventories, prepaid expenses;
- Long-term investments, such as securities, pension funds;
- Property, plant and equipment;
- Human resources;
- Intangible assets, such as patents, licenses, trademarks, and software development costs.

Liabilities include, but are not limited to:
- Current liabilities, such as notes and accounts payable, short term debts, advances from customers on contracts, accrued compensation and benefits, income tax payable;
- Long-term Liabilities, such as the issuance of bonds, long-term lease obligations, deferred income tax liabilities, service or product warranties, and other contingencies.

Workers that require LMOs
With respect to mergers and acquisitions, changes in ownership structure should not require a new LMO application if the new entity continues to be the worker’s employer, provided the new owner assumes the previous owner’s duties and liabilities, including those of the prior owner related to the filing of LMO applications, i.e. where a successor in interest can be demonstrated.

It would be in the best interest of the temporary foreign worker to apply for a new work permit to reflect the name of the new entity.

If some assets or liabilities are not assumed by the successor entity after the corporate restructuring, then a “successor-in-interest” may not exist. As a result, the new entity will have to apply for a new LMO and the worker for a new work permit.

Workers Requiring LMOs: Documentation to Support New Work Permit
In order for a new work permit reflecting the new corporate name to be issued, the following documentation should be submitted:
- A statutory declaration signed by an authorized officer of the corporation attesting to the nature of the restructuring and successor in interest
- Copy of a corporate press release or announcement confirming the corporate change.

Where a “successor in interest” exists, a temporary foreign worker who requires a LMO would benefit from Regulation 186(u) while the application to vary terms and conditions was being decided on by CPC Vegreville, as long as the application for the renewal was made before the expiry of the existing work permit.

It would be in the best interest for affected workers to submit applications to renew their work permits to reflect the new corporate name within 90 days of the closing of a deal. Cost recovery fees would apply.

LMO Example
A small company plans to merge with a large company. After the merger, the small company, which employs many workers who require a LMO, will cease to exist. After the merger, the workers requiring a LMO, who were employed by the small company, are now working for the large company under the same conditions. The large company takes over the small company’s assets and liabilities. Because of this, the large company becomes “successor in interest”, i.e. substantially succeeds to the interests and

obligations, assets and liabilities of the small company. Therefore, the workers from the small company do not need new LMOs but should apply for new work permits to reflect the name of the new owner.

Intra-company Transferees
The intra-company transferee category allows the transfer of certain employees to Canada from qualifying foreign entities for temporary periods. To qualify, the foreign employee must take a position with the Canadian entity in an executive, senior managerial or specialized knowledge capacity. Also, a qualifying corporate relationship must exist between the Canadian and foreign entities.

The original foreign entity can cease to exist in an intra-company transferee situation, as long as there is another entity with a qualifying relationship to the Canadian entity.

The terms and conditions of the intra-company transferee's work permit will continue to be valid if the Canadian employer is still doing business either directly or through a parent, branch, affiliate, or subsidiary in another country to which the employee can reasonably be expected to be transferred at the end of their assignment in Canada. Under certain circumstances joint ventures also qualify. Where this is the case, the intra-company transferee may apply to have their work permit renewed to reflect the name of the new owner and continue to work for the Canadian entity.

Intra-company Transferees: Documentation to Support Renewed Work Permit
In order for a new work permit reflecting the new corporate name to be issued for an intra-company transferee the worker should present the following documentation:

- A statutory declaration signed by an authorized officer of the corporation attesting to the nature of the restructuring and qualifying corporate relationship;
- Copy of a corporate press release or announcement confirming the corporate change.

Where a qualifying relationship exists an intra-company transferee worker would benefit from Regulation 186(u) while the application to vary terms and conditions was being decided on by CPC-Vegreville, as long as the application for the renewal was made before the expiry of the existing work permit.

It would be in the best interest for affected workers to submit applications to renew their work permits to reflect the new corporate name within 90 days of the closing of a deal. Normal cost recovery fees would apply.

Intra-company Examples
Consider the situation where a foreign corporation sells its Canadian subsidiary to a Canadian company. If all of the employees of the former subsidiary are transferred to the purchasing Canadian company the foreign intra-company transferees would no longer be eligible for consideration in the intra-company transferee category since a qualifying relationship would no longer exist between a foreign and a Canadian entity.

In the situation where a Canadian and foreign subsidiary were both purchased by a third entity, a qualifying relationship could still be shown even when the ownership changes, provided the Canadian and foreign entity meet the definitions of parent, branch, affiliate or subsidiary.

Sample Employer Information
The sample employer information (see below) may assist officers in determining whether a new work permit, and LMO if applicable, is required in cases where there is a change in the name of the employer.

SAMPLE

Confirmation: Change of Employer Name

(To be completed by Employer for confirmation of change of corporate name or legal structure)

Section 1: Particulars of Current Employee	
Name:	
Address:	
Client ID No.:	
Occupation:	
Location of Employment:	
Date of Issuance of work permit:	
Date of Expiry of work permit:	

Section 2: Particulars of Current Employer (Prior to Change of Name)	
Name:	
Address:	
Phone:	
RCN:	

Section 3: Particulars of Employer Change of Name:	
Name:	
Address:	
Phone:	
RCN:	
Effective Date of Change of Employer's name:	
Location of Employment:	
Employer Contact Representative and Contact Information:	

Section 4: Reason for Name Change:
Specify reason for name change. Guidance for completion of this section is provided on the reverse side.

- *Acquisition*
- *Merger*
- *Consolidation*
- *Other*

Briefly describe reasons change in name or legal below and attach the following documentation confirming the change described above for the following categories of workers:

Intra-company Transferee Employees:

1. Statutory declaration signed by an authorized officer of the corporation attesting to the nature of the restructuring and qualifying corporate relationship.
2. A corporate press release or announcement confirming the change.

LMO Employees:

1. Statutory Declaration signed by an authorized officer of the corporation attesting to successor in interest.
2. A corporate press release or announcement confirming the change.

Rationale for Name Change:

I certify that the information provided above is correct	
	Signature
Name:	

Appendix J Temporary Foreign Worker Units: Expanded Services

Background

Bringing a temporary foreign worker to Canada requires the interpretation and application of the *Immigration and Refugee Protection Act (*IRPA*)* by three different federal government departments. Service Canada is mandated to assess the impact of the foreign worker's entry into the Canadian labour market. Citizenship and Immigration Canada, International Region assesses potential foreign workers and processes temporary resident visas at a visa post abroad. The Canadian Border Services Agency examines these foreign nationals at our borders. This process can be difficult for an employer to navigate when seeking to hire a foreign national as an employee.

The first Temporary Foreign Worker Unit (TFWU) at an inland CIC was opened in Montreal in 2003 to inform employers of the requirements to be met when bringing a foreign worker to Canada. In September of 2006, in response to a booming economy in the western provinces of B.C. and Alberta, two more Temporary Foreign Worker Units, based on the Montreal model, opened their doors in Vancouver and Calgary as pilot projects. In addition to providing advice, TFWU staff coach clients and stakeholders through public-education sessions as well as employment-sector workshops and conferences.

Current Status

Service expanded to include all regions of Canada

Following the success of the existing three units, the Minister of Citizenship and Immigration decided to expand the project. Effective February 2008, two additional offices were opened, one in Moncton (providing service to the Atlantic Region) and one in Toronto (providing service to the Ontario Region). In addition, the Calgary office was expanded to provide service to the whole Prairies and Northern Territories Region. As a result, each region now has a dedicated Temporary Foreign Worker Unit.

National Working Group

A national working group has been created which includes representation from all regions as well as NHQ. The working group also includes representation from our Service Delivery Partners, CBSA and HRSDC. The purpose of the working group is to foster enhanced horizontal and vertical communication (internally as well as externally), to create consistent tools and products, and to ensure that best practices are shared and put into operation in each of the units.

Liaison Desks at NHQ:

The **OMC Liaison Desk** will provide functional guidance to Temporary Foreign Worker Units and regional offices. It will also:

- review and approve all products and tools;
- conduct national reviews to establish best practices and service standards;
- coordinate training opportunities for TFWU staff;
- provide opportunities for stakeholder evaluation to ensure ongoing client service; and
- provide a centralized conduit for information sharing with service delivery partners, including International Region.

The **International Region, Temporary Foreign Worker Desk** will focus on:

- liaison and outreach with domestic partners and stakeholders;

- collaboration with OMC and domestic regions to develop outreach tools and products for use overseas;
- coordination of information sharing with domestic and international partners;
- development of TFW-related policy, in partnership with OMC, Immigration Branch and other NHQ partners, CIC domestic regions, HRSDC/Service Canada and CBSA;
- operational guidance to missions to enhance quality and consistency with TFW decision making; and
- quality-assurance initiatives at missions overseas.

Increased Communication

These new initiatives have resulted in increased communication and cooperation both within CIC and between the relevant service-delivery partners. Ongoing monitoring, consistent tools and thorough data tracking are now in place to ensure CIC's ongoing ability to support employers. The creation of centralized desks on Temporary Foreign Workers, for both domestic and international regions, allows for centralized coordination and quality assurance initiatives. It also ensures that there are no gaps in the communications continuum from the initial examination abroad to the issuance of the work permit at the Canadian Port of Entry. Regional Temporary Foreign Worker Units play a significant role not only in educating and informing employers, but also in facilitating their active participation in the process.

Enhanced Federal/Provincial Relationships

Finally, as the provinces play an increasingly active role in the selection of foreign workers, the TFWUs have become a significant resource for our provincial partners. Many provinces now have Federal/Provincial agreements that include annexes on Temporary Foreign Workers. Federal/Provincial working groups at the regional level enable an integrated approach to ensuring that the rights and responsibilities of both employers and workers are understood and met.

Contact

For further information on the content of this document, please contact Operational Management and Coordination Branch at OMC-GOC-Immigration@cic.gc.ca.