

Citizenship and Immigration

Canada

Chapter FW 2

Policy and Special
considerations



Table of Contents

1	POLICY AND PROGRAM FRAMEWORK	1
1.1	Intent o policy	1
1.2	General provisions	1
1.3	Validation (See Chapter FW 3, Section 4 and APPENDIX A)	2
1.4	Validation exemptions (See Chapter FW 3, Section 4 and APPENDIX A)	2
1.5	The role of HRCC	2
1.6	Role of the Visa and Immigration Officer	3
2	QUÉBEC PROGRAM	4
2.1	Canada-Québec Accord	4
2.2	Formal consultations	4
2.3	Joint undertaking on temporary foreign workers	4
2.4	CAQ requirement	4
2.5	Issuance of CAQs	4
2.6	Joint validation procedures	4
2.7	Countries served by MRCIQ	5
3	PRIVACY LEGISLATION	6
3.1	Releasing Information	6
3.2	Dealing with third party representatives	6
4	COST RECOVERY	7
4.1	Legislation	7
4.2	Fees payable	7
4.3	Method of payment	7
4.4	Exemptions	7

1 POLICY AND PROGRAM FRAMEWORK

1.1 Intent of policy

The objectives of the policy primarily focus on the economic benefits accruing to Canada by fulfilling a legitimate need of the Canadian labour market.

The Government of Canada will facilitate the entry of foreign workers into Canada who can enhance the functioning of the Canadian labour market. This will be accomplished by encouraging the entry of suitable qualified foreign workers who can create/maintain employment and career opportunities for Canadians; who have skills and/or knowledge not available in Canada; who can transfer specialized skills and technology or provide training opportunities to Canadian workers; who can strengthen the competitive position of a company operating in Canada in the international market; and/or who can create or expand international opportunities for Canadian workers and Canadians in general.

The Government of Canada will restrict/exclude the entry of foreign workers who would have an adverse impact on the Canadian labour market; who cannot reasonably expect to function in the Canadian labour market; who seek positions for which Canadians are qualified and available or could be readily trained; and/or who are inadmissible under other conditions.

Notwithstanding the above, the government will provide certain individuals or groups with the authority to work in Canada for humanitarian or compassionate reasons. The government will also admit foreign workers who are covered by one of Canada's international or reciprocal agreements or obligations or where the individual(s) will create social or cultural benefits.

The policy on foreign workers permits the admission of foreign workers who meet Canada's needs while ensuring that Canadian citizens and permanent residents have adequate employment and training opportunities. The balance between these two objectives is reached by admitting foreign workers whose skills are in short supply and whose entry will not adversely affect Canadian citizens or permanent residents or where benefits will result from the entry of the foreign worker. Benefits may be economic, social or cultural.

Employment is either subject to validation by a Human Resource Centre Canada (HRCC, formerly CEC) or is exempt from the process. The HRCC plays an important role in evaluating the need for foreign workers by encouraging employers to practice human resource planning, including determining if and when foreign worker recruitment is required.

1.2 General provisions

Canada strives to protect employment opportunities for Canadian workers through a process of validation of offer of employment. This process certifies that the admission of the foreign worker will have no adverse effect on the economy. Although there are some important exemptions to this process which are discussed below, temporary foreign workers coming to work in the regular labour market stream in principle require an employment authorization which must be validated by a Human Resource Centre of Canada (HRCC).

See [Chapter FW 3, Section 2](#)

Persons listed in R19(1) are exempt from the need for employment authorizations. Generally, this regulation identifies persons who enter Canada to take up duties which are not related to the labour market, and who would be admitted regardless of the state of the economy or employment picture. The reasons that motivate their admission may be political, religious, cultural or business and trade oriented. Persons such as diplomats, military personnel, clergy, artists, athletes, emergency service personnel, guest

speakers, expert witnesses and business visitors are among some of the groups included.

1.3 Validation (See [Chapter FW 3, Section 4](#) and [APPENDIX A](#))

Validation by a HRCC is a labour market process which determines that the employment of a foreign worker will not have an adverse effect on employment opportunities for Canadian citizens and permanent residents. It is normally accepted by visa and immigration officers as the basis to approve the issuance of an employment authorization, provided the foreign worker meets the qualifications needed for the job and the general requirements of the *Immigration Act*.

1.4 Validation exemptions (See [Chapter FW 3, Section 4](#) and [APPENDIX A](#))

As specified in R20(5) some forms of employment are exempt from the need for validation. The validation exemptions which flow from the regulations describe circumstances where exceptions are warranted because there are clear beneficial labour market effects or other overriding considerations to allow the admission of a foreign worker. Some circumstances where exemptions may apply include:

- (i) where there are humanitarian or social considerations;
- (ii) where Canada is bound by international commitments or reciprocal arrangements;
- (iii) to permit workers to engage in approved educational, research and scientific projects;
- (iv) to permit workers to engage in volunteer projects;
- (v) to facilitate the admission of workers who will create or maintain employment or generate other benefits for Canadians.

1.5 The role of HRCC

Human Resource Development Canada's foreign worker employment policy recognizes the social and economic needs of Canada. The policy endeavours to maximize employment opportunities for Canadian citizens and permanent residents and enhance the employer's ability to meet current and projected human resource requirements. Validation only occurs when avenues in Canada are explored or if there are likely to be benefits to Canada.

After consulting with the employer, the HRCC provides an opinion to the visa or immigration officer on the efforts made by the employer to hire or train Canadian workers, on the duties to be performed, on the qualifications required of the foreign worker, and on the wages and working conditions offered. This opinion is formed by HRCC based on an assessment of several criteria, including:

- i) whether the employer has made reasonable efforts to hire or train Canadian citizens or permanent residents for the employment with respect to which the authorization is sought; or
- ii) in situations where there may be Canadians who could be trained or available for the employment, whether the employer has nonetheless demonstrated that the employment of the person will help create or maintain employment benefits or opportunities for Canadians, and
- iii) that the wages and working conditions offered are sufficient to attract and retain Canadians in the employment in question;
- iv) that the employment of the foreign worker will not affect the settlement of any labour dispute that is in progress at the intended place of employment, or the employment of any person who is involved in such a dispute;

- v) that the employment offered by the prospective employer is *bona fide*, and not designed to be inaccessible to Canadian citizens and permanent residents.

If the employer's request is approved, the HRCC will issue a letter to the employer and confirm the status of the case by providing CIC with the appropriate validation. The message is filed electronically by the date of the HRCC's decision, the HRCC's validation systems file number, and in alphabetical order under the foreign worker's name. If the HRCC rejects the offer of employment to a foreign worker, no electronic message is forwarded to CIC.

There may be times when a HRCC receives a request for a foreign worker where the employment may be described in a validation exempt category. In these cases, the HRCC advises of the circumstances of the case and suggests the use of a validation exemption code.

1.6 Role of the Visa and Immigration Officer

Visa and Immigration Officers are responsible for assessing the eligibility and admissibility of individuals who apply for an employment authorization.

Officers assess the background and qualifications of applicants to ensure that they meet the specific requirements of the position. As explained above, the decision on whether jobs will not adversely affect employment opportunities for Canadians lies with the HRCC. Unless exempt under 20(5), validation of a job offer by a HRCC is necessary before officers can consider an application for an employment authorization for certain foreign workers. When a HRCC validates a job offer, it is assessing the job in question according to specific guidelines and is indicating that there are no Canadians readily available who can fill the vacancy.

Where clients submit an application without first seeking validation, immigration and visa officers are responsible for determining whether the employment fits within a validation exemption category, or whether the applicant's employer should be referred to the HRCC in order to undergo the assessment process. See [Chapter FW 3, Section 6](#)

2 QUÉBEC PROGRAM

2.1 Canada-Québec 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 validation requirements**.

Workers admitted to Québec require Québec's consent through the issuance of a "Certificat d'Acceptation" in cases where the employment requires validation, and in cases of live-in domestic caregivers who change employers and obtain new validations. No CAQ is required where the employment is exempt from validation. See [Section 2.4](#).

2.2 Formal consultations

Ongoing consultations with the Province of Québec are formalized under the terms of Articles 9 and 10 of the Canada-Québec Accord which require the establishment of the Implementation Committee, co-chaired by a representative designated by the federal minister and one designated by the provincial minister. The Committee, which is required to meet formally at least twice a year, also includes formal representation from the Department of Foreign Affairs and International Trade.

2.3 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 validation requirements, 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

- 1) determining jointly with Canada whether there is a Canadian citizen or permanent resident available to fill the position offered to the temporary worker;
- 2) 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.

2.4 CAQ requirement

Persons destined to work in Québec, who are validation exempt or where the duration of employment is for five days or less (not necessarily consecutive days) do not require a CAQ.

Persons destined to Québec who require validation must obtain a CAQ from the "Ministère des Relations avec Citoyens et de l'Immigration du Québec (MRCIQ)".

2.5 Issuance of CAQs

Procedures are in place to ensure the exchange of documentation between Canada and Québec where validation is required. An approval from HRCC 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.

2.6 Joint validation procedures

Joint procedures can be summarized as follows:

- 1) An employer wishing to hire a foreign worker submits the application form to the HRCC, describing the nature of the employment and the skills required to perform the work.
- 2) An employer who first submits an application to the MRCIQ is advised by Québec to submit the request to HRCC.

- 3) After assessing the request, HRCC sends the application and any background information to MRCIQ indicating its intention to accept or refuse.
- 4) Within 10 days, MRCIQ indicates its intention to accept or refuse to HRCC, documenting its decision with background information, as necessary.
- 5) If either Canada or Québec can demonstrate that the employment can be filled with a Canadian worker, the employer's request is refused.
- 6) If both Canada and Québec agree that the employment can only be filled with a foreign worker, the application is approved.
- 7) HRCC 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) HRCC confirms the approval with the appropriate visa or immigration office. The process described at [Section 1.5](#) applies.

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

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.

For detailed procedures, refer to Annex I of the Canada-Quebec Agreement and Joint Directives to Canada and Quebec (IL 10).

2.7 Countries served by MRCIQ

The "Service d'Immigration du Québec" has offices in the following countries:

Austria, Vienna
France, Paris
China, Hong Kong
Mexico, Mexico City
Syria, Damascus
United States, New York

3 PRIVACY LEGISLATION

3.1 Releasing Information

The Application Form for Employment Authorization includes a notation that the information provided will be protected under the *Privacy Act*.

Privacy legislation requires that information concerning clients be released only to the client. The information can be released to the client's designated representative only upon the client's written approval.

Consequently, representations should be dealt with either in person or by mail. Information should be given out over the phone only if the caller can be positively identified as either the client or the client's representative.

3.2 Dealing with third party representatives

In all cases, requirements of the *Privacy Act* apply. In cases where there is no written approval from the client on the disclosure of information to such third party representative, that person's questions should be noted, general requirements explained, and officers should make a commitment to respond to concerns directly to the applicant.

4 COST RECOVERY

4.1 Legislation

For exact legislative reference, please refer to items 5 and 6 of the *Immigration Act Fees Regulations*. (IL 4)

4.2 Fees payable

Refer under column III of the *Immigration Act Fees Regulations* to verify current fees.

4.3 Method of payment

Fees are payable at the time the application is made, and should be included with the written application. Method of payment varies depending on where the application is processed, however the fee is always payable to the Receiver General for Canada.

4.4 Exemptions

There are several classes of persons who are exempt from paying the fee for an employment authorization. For your convenience, these classes are listed below, however the IH Manual and/or IL 4 are the authoritative sources. Annex 5 of IR5 also refers to employment authorization fee exemptions. (Validation Exemption Code: VEC, Cost Recovery Exemption Code: CREC)

Item 5(2)

- (a) In-Canada refugee claimant & dependants (VEC-A02; CREC-E01);
- (b) Convention refugee processed in Canada & dependants (VEC-A03; CREC-E01);
- (c) Convention refugee seeking resettlement & dependants (VEC-A03; CREC-E01);
- (d) Temporarily destitute student (VEC-C05; CREC-E02);
- (e) Participant in a research, educational or training program approved by the Minister (VEC-D10; CREC-E02); including
 - (i) Independent scientific research approved by the Minister of International Trade - Science and Technology Division (VEC-D20; CREC-E02);
 - (ii) Special Program students under the sponsorship of the Canadian International Development Agency (CIDA) when employment forms part of the program arranged by CIDA (VEC-D30; CREC-E02);
 - (iii) Foreign students when the employment forms an essential part of their course of study in Canada as certified by the institution, except in medical and accountancy fields (VEC-D35; CREC-E02);
- (f) Religious or charitable worker without remuneration (VEC-E20-E25; CREC-E02);
- (g) Permit holder and dependant because of war, natural disaster or member of a designated class before coming to Canada (VEC-F01-F02-F03; CREC-E02);
- (h,i) Dependant of the following persons whose employment results in reciprocal employment of Canadian citizens in other countries: diplomat, consular officer or representative or official of another country or of the UN and its agencies, member of an armed force, officer of a foreign government under an exchange agreement (VEC-E99; CREC-E03); (**refer to IR 5, Annex 5**);
- (j) Person reciprocally employed in employment of an artistic, cultural or educational nature pursuant to certain reciprocal agreements between Canada or a province and a foreign government (VEC-B10; **CREC-E04 applies for some agreements only. Refer to IR 5, Annex 5**);

- (k) Participant in an International Student or Young Workers reciprocal employment program (VEC-E35; CREC-E05);
- (l) A citizen of a country with which Canada has a mutual fee exemption agreement (CREC-E06);
- (m) U.S. Immigration and Naturalization Service personnel, U.S. Customs Pre-Inspection officer, U.S. Grain Inspector, American member of the International Joint Commission, U.S. government official in possession of a valid U.S. official passport and assigned to a temporary posting in Canada (VEC-B10; CREC-E09).

Item 6

Persons in a group of fewer than 15 performing artists who apply at the same time and place for authorization to engage or continue in employment (VEC-A08 or validation may apply; CREC-E07 applies to some members of the group) - the group rate applies to the head of the group using code FPX.

For a complete list of codes refer to the Immigration Coding Handbook (IH).