



Using Immigration to Get Ahead of the Competition: How Canada's
New Permanent Residency Programs Can Be Used By Your
Company to Expand the Talent Pool

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September 30, 2013
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I. Introduction

In the last 12 months, virtually all of Canada's economic permanent residency programs have been overhauled. Canada's introduction of the new Federal Skilled Trades Class, along with major revisions to the Federal Skilled Worker Program and Canadian Experience Class, has been matched by a major overhaul of the Manitoba Provincial Nominee Program. This paper will address the new criteria currently in force and how businesses can use these programs to their advantage. While there have also been significant changes to other Provincial and Territorial Nominee Programs, changes to these programs are beyond the scope of this paper.

II. Converting Temporary Foreign Workers to Permanent Residency

In many cases, the foreign national your company is looking to recruit as a permanent employee may already be working for you as a temporary foreign worker.

When converting from a temporary work permit to permanent residency, problems can arise for the foreign national in the period between the expiry of the work permit and the issuance of Canadian permanent residency. It is important to understand these issues so as to be able to ensure that your employee will be able to continue working for you through this period.

If the transition from a work permit to permanent residency is not managed properly, companies run the risk of losing employees and employees run the risk of working illegally in Canada.

i) Manitoba Provincial Nominee Program Work Permits

One solution to the potential gap of time between the expiry of a work permit and the issuance of permanent residency is a work permit pursuant to the Manitoba Provincial Nominee Program.

Under the Immigration Protection Regulations, a foreign national who has been:

1. Nominated by the Province of Manitoba for permanent residency; and
2. Is employed or has a job offer from an employer based in Manitoba

can obtain a letter from the Province of Manitoba that would allow that foreign national to obtain a work permit to work in Manitoba without requiring a Labour Market Opinion.

A Labour Market Opinion is a document issued by the Government of Canada that allows employers to hire foreign nationals to work in Canada. In most cases, in order to obtain a positive Labour Market Opinion, a company must first advertise and recruit within Canada. Only once the employer is able to show that there are no Canadians or Canadian permanent residents willing and able to fill the position will a Labour Market Opinion be issued.

The advantage of obtaining a work permit via an approved Provincial Nominee application is that no recruiting is necessary. As long as the foreign national applies for and is approved by Manitoba for permanent residency, Manitoba can write a letter confirming that the foreign national has been nominated for permanent residency by Manitoba and that the foreign national is urgently required by an employer in Manitoba.

In order to take advantage of this type of work permit, foreign nationals should apply to the Manitoba Provincial Nominee Program as soon as possible since the Manitoba Provincial Nominee Program process can take months to complete. While Manitoba has been historically good at trying to accommodate applications from foreign nationals (who are already in Canada as temporary foreign workers) whose work permits will expire, Manitoba's ability to make this accommodation is not guaranteed.

Please note that the filing of a Provincial Nominee Program application does not, in and of itself, entitle a foreign national to make application for an extended work permit. It is only after Manitoba has approved the application and has written the relevant letter can the application for a work permit be filed. As a result, employers wishing to encourage temporary foreign workers to apply for permanent residency should keep an eye on these timelines.

This process can also be used by companies to hire Provincial Nominees who are not currently in Canada. How a company can use this strategy will be discussed later in this paper.

ii) Bridging Open Work Permits

In addition to being able to obtain a work permit after being nominated by the Manitoba Provincial Nominee Program, the Federal Government has a program that provides what are called "Bridging Open Work Permits" for certain temporary foreign workers.

In order to obtain a bridging open work permit, a foreign national must be temporary foreign worker with a work permit. The temporary foreign worker must file an application for permanent residency under the Federal Skilled Worker Program, the Canadian Experience Class, a Provincial Nominee Program, or the Federal Skilled Trades Class. Like Provincial Nominee Program work permits, the filing of a permanent residency application does not make one

eligible for a bridging open work permit. In order to be eligible for a bridging open work permit, the following must be met:

1. The temporary foreign worker must currently be in Canada;
2. The temporary foreign worker must have valid status on a work permit due to expire within 4 months; and
3. The immigration application will have had to have received what is called a “positive eligibility assessment”

For an employer that currently employs a temporary foreign worker, one of the disadvantages of the bridging open work permit is that it gives the temporary foreign worker the ability to work for any employer. As a result, there is a risk that a company’s temporary foreign worker could move to another employer once a bridging open work permit is issued.

If the temporary foreign worker has applied under one of the Federal streams, their open work permit will allow them to work for any employer anywhere in Canada. If they are Manitoba Provincial Nominee Program applicants, their open work permit would allow them to work for any employer anywhere in Manitoba.

While there is a danger that the employee could go and work for any other employer, if you company needs to move your employee to a different location or to a different job, the bridging open work permit may be helpful for your HR needs.

III. The Manitoba Provincial Nominee Program

One of the major immigration programs used by temporary foreign workers to immigrate to Manitoba is the Manitoba Provincial Nominee Program. Under this program, temporary foreign workers must indicate an intention to settle and work in Manitoba and first submit an application to the provincial government. Once the Province approves the application, the temporary foreign worker must then submit the application to the Federal Government who has the final decision-making power with respect to whether the individual becomes a permanent resident or not.

i) Who Can Apply?

There are essentially two paths by which an individual can immigrate to Canada as a Manitoba Provincial Nominee. The first path is for temporary foreign workers who are currently working in Manitoba. The second path is for skilled workers overseas.

ii) Temporary Foreign Workers

In order to qualify as a temporary foreign worker under this program, a foreign national must have been working for at least 6 months in Manitoba on a full-time basis. In addition, the temporary foreign worker's employer must offer the worker full-time, long-term employment.

The one exception to the 6-month full-time requirement is for temporary foreign workers who previously studied in another Canadian Province or Territory. For these individuals, it is necessary for the temporary foreign worker to have worked in Manitoba for 12 months on a full-time basis before applying.

When applying under this program, it is important to note that individuals should not apply before the relevant 6 or 12-month period has concluded. Even though immigration applications can sometimes take months to process, applications for the Manitoba Provincial Nominee Program should not be made until after the minimum work period has concluded.

Another thing that is important to note is that this program is only open to individuals with full-time job offers. Individuals offered part-time employment are not eligible to apply under this program.

One of the big advantages of the Manitoba Provincial Nominee Program is that it is available to virtually any type of employee. Unlike the Federal immigration programs which are reserved for individuals with certain skill levels, the Manitoba Provincial Nominee Program is available for individuals of all educational and skill levels.

It should be noted that individuals who qualify under the Manitoba Provincial Nominee Program will not necessarily become Canadian permanent residents. Citizenship and Immigration Canada reserves the right to refuse application for a number of reasons. In past years, the more common reasons for refusal were the existence of past criminal records, medical problems, fraudulent documents, or a negative immigration history.

However, in recent years, there has been a focus on whether an individual will be "economically established" in Canada. Under the law, the Federal Government is entitled to reassess an immigrants' application, and if they are not convinced that a person will become "economically established", they can refuse an application notwithstanding the fact that Manitoba may have nominated them.

ii) Skilled Worker Overseas

Another opportunity for individuals to immigrate to Manitoba is as a skilled worker overseas. As the title of this category suggests, the foreign national in this case need not be working in Manitoba before making an application. The assessment for this type of immigration stream is different from ones for individuals currently working in Manitoba. Skilled workers overseas are assessed under this program on factors such as age, language proficiency in English and French, work experience, education and connection to Manitoba. Applicants under this program must score a minimum number of points in order to be eligible for selection by Manitoba.

For the most part, the connection that foreign nationals who apply under this Provincial stream have to Manitoba is a relative in Manitoba. In the past few years, the largest groups of Provincial Nominees have come from the Philippines, India, and Germany. Businesses who can appeal to these immigrant communities, perhaps through advertising in the local ethnic press, can potentially tap this resource.

IV. Canadian Experience Class

Another option to convert an employee from a temporary foreign worker to a permanent resident is the Canadian Experience Class. Under the Canadian Experience Class, an individual must meet the following criteria:

1. The individual must have acquired at least 12 months of full-time work experience (or the equivalent of part-time work experience) in the 36 months before the date on which the application is received. The 12 months of full-time or full-time equivalent work experience must have been acquired in Canada in an occupation in skill Type O or skill Level A or B of the National Occupational Classification (discussed below); and
2. The individual must meet minimum language proficiency requirements as proven by the successful completion of a prescribed language test.

i) The Job Requirements

The key to the job experience requirements in this immigration class is whether the temporary foreign worker is working within the appropriate skill classification under the National Occupational Classification (NOC).

The NOC is essentially a list of jobs in Canada created by the Government of Canada. Skill Type O of the NOC is for management occupations. Skill Level A jobs are for jobs that usually require a university education (generally professionals). Skill Level B jobs are for jobs that

usually require a college education or apprenticeship training (generally for tradespeople, technical occupations, paraprofessionals, and certain supervisory roles).

If a foreign national's work experience does not fall within the relevant NOC classifications, they will not be eligible for the Canadian Experience Class.

With respect to the job requirements, it should be noted that the only work experience that will be counted is work in Canada when a person has valid temporary resident status. In other words, foreign nationals who are working in Canada as refugee claimants and individuals working in Canada without authorization will not be able to count that time towards the minimum 12-month requirement.

As well, it should be noted that any period of employment during which the individual was engaged in full-time study will not be included in calculating the period of qualifying work experience. This would include work experience gained through co-op programs, the Off-Campus Work Permit Program (that allows students to work off campus while being full-time students), and the program that allows students to work on-campus.

When an employer supports an application under the Canadian Experience Class, it is extremely important to note that reference letters are key. Reference letters from employers list out the job duties that the employee has carried out. Without a list of job duties, Citizenship and Immigration Canada will have no way of knowing whether a foreign national's job title matches with the job title and duties set out in the NOC.

In listing out the relevant job duties, it is important for employers to refer to the NOC to ensure that the employers' internal duties meet the NOC standard. While employers should carefully review the NOC, employers should note that it is important that they be truthful in terms of the work that has been done. Simply copying a NOC description into a reference letter can lead to a refusal.

ii) Language Requirement

Under the Canadian Experience Class, a minimum language score must be obtained from a testing agency designated by Citizenship and Immigration Canada. At the present time, only "General Training" results from the International English Language Testing System (IELTS) or "CELPIP-G" results from the Canadian English Language Proficiency Index Program (CELPIP) will be accepted. No other test results or evidence of language ability will be accepted.

It should be noted that the language test is mandatory for all applicants. Individuals who are native English speakers, for instance, will still have to take this test. If the individual does not

score the minimum required on all of the elements of the test (speaking, listening, reading and writing), the application will be denied.

Because it is necessary to submit test results when the application is submitted, care should be taken to plan ahead to ensure that the test is taken in enough time. Lately, there have been significant backlogs for English language testing in Canada because of the high demand for this test for immigration purposes. Booking a time to write an English language test should be done well in advance.

V. Federal Skilled Worker Program

Another tool that can be used is the Federal Skilled Worker Program. While the Canadian Experience Class would typically be a preferred class of immigration in the Federal stream, there are some situations where the Federal Skilled Worker Class would be a better fit for individuals who are temporary foreign workers working in Canada.

Under the Federal Skilled Worker Class, an individual must meet the following criteria:

1. The individual must have accumulated at least one continuous year of full-time work experience or the equivalent in part-time work in a NOC O, A, or B occupation within the last 10 years and
 - a. The work experience must be in what Canada describes as an “eligible occupation” as set out by Citizenship and Immigration Canada from time to time; OR
 - b. The foreign national has a valid offer of what is called “arranged employment” (discussed more below); OR
 - c. The foreign national is enrolled (or is a recent graduate) of a PhD program in Canada and meet certain other criteria. (For the purpose of this paper, we will not be discussing the PhD stream.)
2. The individual must meet minimum language requirements;
3. The individual must have completed a Canadian educational credential or completed a foreign educational credential with a Canadian equivalency assessment; and
4. The individual must meet a minimum point score.

Please note that there is a quota on the number of applications that will be received under this program. However, the quota does not apply to individuals with “arranged employment” making this type of application more significant.

i) Work Experience Requirements

Like the Canadian Experience Class, reference will be made to the NOC with respect to determining whether an individual has the relevant work experience. However, under the Federal Skilled Worker Class, the individual must perform the actions described in what is known as the “lead statement” in the NOC. Also, the individual must perform “a substantial number” of the “main duties” set out in NOC, including all of the “essential duties”.

As a result, from an HR professional’s perspective, it is important to review the company’s internal job description with reference to the NOC. As with the Canadian Experience Class, reference letters must be provided by an employer and the duties listed must show that the experience meets the requirements of the NOC. If not, the work experience reflected in that reference letter may not be given credit towards the minimum 1 year of full-time work experience.

With respect to what is “full-time” work, immigration regulations require that a person work at least 30 hours per week. In addition, the person must be paid for their work. As a result, “volunteer work” will not be considered as qualifying work for the Federal Skilled Worker Class. Please note that the holding of more than one part-time job can qualify for the equivalent of full-time work under the regulations. Also, please note that work in excess of 30 hours in 1 week cannot compensate for work of less than 1 year of full-time work experience.

ii) Language Requirements

As with all Federal immigration classes, an individual must score a certain minimum number of points under a prescribed language test set out by the Government of Canada. There is no ability to substitute any other evidence of language ability outside of providing the specific test results.

iii) Educational Requirements

While proving that an individual has a Canadian educational credential would normally be thought to be self-evident, it should be noted that the only Canadian educational credentials that are accepted are ones offered by institutions recognized by provincial authorities responsible for registering, accrediting, supervising, and regulating such institutions.

For the most part, degree-granting institutions and publically-funded institutions would be recognized. However, certain private institutions and schools may not be able to issue a “Canadian educational credential” that complies with the requirements of the Federal Skilled Worker Program. As a result, care must be taken when looking at these credentials.

If the individual does not have a Canadian credential, an equivalency assessment is required of that person's foreign-obtained credential by an organization authorized to provide an equivalency assessment by the Government of Canada. Currently, there are 4 organizations designated by Citizenship and Immigration Canada. They are: Comparative Education Service – University of Toronto School of Continuing Studies, International Credential Assessment Service of Canada, World Education Services, and Medical Council of Canada.

iv) Point System

Once an individual meets the minimum criteria set out above, it is necessary for them to score a minimum number of points on a scoring matrix to qualify for immigration. The current minimum number of points that an individual must score is 67. This is based on six criteria, which are:

1. Education (maximum 25 points);
2. English and/or French Skills (maximum 28 points);
3. Work experience (maximum 15 points);
4. Age (maximum 12 points);
5. Arranged employment (maximum 10 points); and
6. Adaptability (maximum 10 points).

With respect to education, an individual can score anywhere from 5 points (for a high school credential) to 25 points (for doctoral-level studies). While there is no minimum number of points that one has to score under education, if an individual is deficient in the other criteria, the more points scored on education, the better.

With respect to English or French skills, individuals who fluent in one of Canada's official languages can score up to 24 points. However, proficiency in the other official language would be necessary to meet the maximum 28 points under this category. As indicated above, please note that a minimum score of at least 16 is necessary to qualify as a Federal Skilled Worker. As a result, in effect, every successful Federal Skilled Worker will score at least 16 points in this category.

For work experience, points are awarded based on years of experience. Individuals with 1 year of work experience would score 9 points, and individuals with 6 or more years of experience would score the maximum 15. There are other point calculations available for individuals with years of experience between 1 and 6 years.

Again, please note that work experience points are only awarded for years of full-time (or equivalent work) in the appropriate NOC category.

With respect to age, the maximum number of age points available is 12 points for individuals between the ages of 18 and 35 years. For every year a person is above the age of 35, 1 point is taken off. Essentially, what this means is that individuals 47 years of age or older receive zero points.

For individuals working in Canada as temporary foreign workers, up to 10 points can be awarded for “arranged employment”. As a result, companies who employ temporary foreign workers should look at this program. Given the way that most of the other points are awarded, this award of 10 points can often make the difference between a person being selected under this program and a person failing the selection criteria. Again, please keep in mind that the individual must have relevant work experience in an occupation in NOC O, A, or B.

Essentially, there are four ways in which an individual can obtain arranged employment.

The first two ways by which an individual can obtain arranged employment is if that person is currently working in Canada with a work permit. As long as:

1. The work permit is valid at the time the application for permanent residence is made and at the time the visa is issued;
2. The applicant is currently working for the employer specified on the work permit; and
3. The current employer has made an offer to employ the applicant on a full-time, non-seasonal and indeterminate basis.

A foreign national can also qualify for arranged employment without a valid work permit. In order for these foreign nationals to qualify, it is necessary for an employer in Canada to obtain a positive Labour Market Opinion based on a full-time, non-seasonal, indeterminate job offer.

In order to have an employee qualify under this category, an employer would have to go through the Labour Market Opinion process for permanent residency.

The fourth type of employee that can qualify for arranged employment are holders of certain valid work permits who are working for an employer different than the employer who has offered the employee a full-time job. Again, the prospective employer must be offering full-time, non-seasonal, indeterminate employment. Also, the offer of employment has to be approved via a Labour Market Opinion.

While 10 points are awarded for arranged employment, an additional 5 “bonus” points are awarded for arranged employment under the adaptability heading. In addition, if the foreign national has at least one year of full-time work experience in Canada with a valid work permit in a NOC 0, A or B occupation, that foreign national would be able to maximize his or her adaptability score to the maximum 10 points under that heading

As a result, arranged employment for a temporary foreign worker with one year of work experience will, in effect, count for 20 of the minimum 67 points needed to immigrate to Canada. Given that a minimum of 16 points must be scored under language to qualify, this means a person with arranged employment will have at least 36 of the 67 points needed to succeed.

With respect to adaptability points, a maximum of 10 points is available for a number of different criteria. For instance, if an applicant or their spouse has previously worked in or studied in Canada, additional points can be awarded. As well, if a person is married or in a common-law relationship, the language of ability of the spouse can be taken into account. Finally, additional points can be awarded depending on a relative that an individual may have in Canada.

VI. Federal Skilled Trades Class

The Federal Skilled Trades Class is a new immigration program introduced just this year. This program was introduced, in part, because the Federal Skilled Worker Program’s point system was weighted towards professionals and managers. While the Federal Skilled Worker Program did not prohibit tradespeople from applying under that program, the reality of the point matrix generally resulted in tradespeople not being able to accumulate the minimum number of points required to immigrate to Canada.

The requirements of this class are as follows:

1. The applicant must meet the minimum language proficiency threshold in English and French (this language threshold is generally lower than for the Federal Skilled

Worker Program or the Canadian Experience Class);

2. The individual must have acquired at least two years of full-time work experience (or the equivalent in part-time work experience) in a skilled trade occupation in the 5 years preceding the date of application;
3. This work experience must have been acquired after becoming qualified to independently practice in that occupation according to the regulations in the place where the work was performed abroad;
4. The individual must meet the relevant employment requirements of the skilled trades set out in the NOC, except for the requirement to obtain a certificate of qualification issued by the relevant Provincial authority; and
5. The individual must have an offer of full-time continuous work for a period of at least 1 year from up to two employers in that skilled trade occupation or hold a certificate of qualification in that skilled trade from Canadian Province or Territory.

The first question that has to be asked is, “what exactly is a skilled trade”? Under the Federal Skilled Trades Class, skilled trades include occupations in NOC classifications found in the following groups:

1. Major group 72, industrial, electrical and construction trades;
2. Major group 73, maintenance and equipment operation trades;
3. Major group 82, supervisors and technical occupations in natural resources, agriculture, and related production; and
4. Major group 92, processing, manufacturing and utilities supervisors and central control operators.

Please note that there are specific trades that will be accepted under this program and not all trades under these groups will be accepted.

i) What is Full-Time Work?

With respect to full-time work, the requirement is essentially the same as those found in the Federal Skilled Worker Class. A Federal Skilled Trades applicant must work at least 30 hours over a period of 1 week, and be paid for their work.

However, the requirement for work experience under the Federal Skilled Trades Class is more stringent than some of the other immigration programs. The tradesperson must have two years (24 months) of full-time work experience (or the equivalent in part-time work experience) in designated skilled trade in the last 5 years (60 months). However, unlike the Federal Skilled Worker Class, the work experience does not have to be obtained over a continuous period, as it is recognized that many tradespeople work on a project-based timeline.

Also, it should be noted that the individual does not have to be currently employed at the time the application is made.

Again, reference to the NOC is key. The tradesperson must have performed the actions described in the “lead statement”, as well as “a substantial number” of the “main duties” after becoming independently qualified to practice in the trade (i.e. licensed). Work experience before getting one’s “ticket” will not count.

In some cases, an individual does not need certification to become a skilled trade. In this case, two years of work experience is all that is necessary. In this situation, it may be necessary to provide evidence that there is no certification requirement for that trade in the specific jurisdiction.

Another thing to note is that an individual must meet the “employment requirements” in the NOC. Unlike the Federal Skilled Worker Program, which only requires an individual to meet the job duties, this section on employment requirements is key. Of course, as indicated above, if there is a requirement for a certificate in a Province or Territory as a result of the NOC, this does not have to be met.

One of the keys to the Federal Skilled Trades Class is that an individual who holds a certificate of qualification issued by a Canadian Province or Territory can qualify without having a job offer. However, if they do not have a Canadian credential, an offer from up to two employers for continuous, full-time work in Canada for at least a period of 1 year is necessary.

It is important to note in that two different employers can “team up” to hire a skilled tradesperson. Again, because of the project-based nature of tradespersons’ work, this may be necessary in some cases. As to how a job offer is considered to be valid, this will depend on the tradesperson’s circumstances. If the tradesperson is currently working in Canada on a work permit, a tradesperson with a valid offer of employment could qualify.

If the person does not hold a valid work permit and is not authorized to work in Canada (normally, they would currently be living outside of Canada), this person can still apply for permanent residency as long as they have a valid job offer from up to two employers, and that job offer has been approved by Service Canada. This is essentially a Labour Market Opinion based process and all of the conditions that one normally follows for Labour Market Opinions for temporary foreign workers would have to be met.

VII. Immigration Troubleshooting

Just because an individual obtains a positive decision on their Manitoba Provincial Nominee Program or a positive selection decision on a Federal immigration application, this does not mean that they will become permanent residents. Individuals who are selected for permanent residency still must be assessed for what is called “inadmissibility”. If a person or any of their family members are found to be inadmissible, the entire permanent residency application can be denied.

The following are two of the most common grounds of inadmissibility.

i) Medical Inadmissibility

While there are a number of grounds by which an individual can be found medically inadmissible, the major reason for medical inadmissibility is what is called “excessive demands”.

Under this provision of the law, an individual’s permanent residency application can be denied if the individual or any of his or her family members has a medical condition which would be more expensive to treat than the average Canadian. The assessment of excessive demands does not necessarily limit itself to the assessment of medical costs, but also social services costs.

For instance, there is case law with respect to mental retardation that has found that a family member who has moderate or severe mental retardation could cause the refusal of an immigration application while individuals found to have mild mental retardation may not.

For the most part, there is not much one can do on the issue of medical inadmissibility. If an individual has a curable condition (for instance, osteoarthritis of the knees can be repaired with knee replacement), undergoing that procedure before a finding of medical inadmissibility is made, can result in the individual being able to immigrate to Canada. However, if the individual is not able to be “cured”, difficulties will exist.

For individuals facing these issues there are opportunities to try to make arguments that the individual's condition will not cause an excessive demand. As well, there are opportunities to make argument that an application should still be accepted on humanitarian and compassion grounds.

ii) Criminal Inadmissibility

Another reason for refusal of application is that of criminal inadmissibility. Under this category, the most common reason for refusal is if an individual or any of his or her family members has a criminal record.

Unfortunately, determining criminal inadmissibility is not necessarily easy. If an individual is convicted of a crime in Canada, the determination of criminal inadmissibility is a fairly straightforward process. However, if the person has committed a crime outside of Canada (whether convicted or not), criminal inadmissibility becomes part of an "equivalency assessment".

It is not within the scope of this paper to provide a large discussion on the issue of criminal inadmissibility. Suffice to say if you identify a temporary foreign worker who will apply for permanent residency who may have a criminal record, an investigation of that criminal record should be done prior to an application being filed to see if anything can be done. Not all criminal convictions will result in inadmissibility. As well, in some cases, individuals can have their criminal records erased for immigration purposes through a process known as "rehabilitation". If this available, it is sometimes better to go through this process (or wait until one is eligible to go through this process) before proceeding.