

June 1, 2001

Mr. Mark Davidson
Deputy Director
Citizenship and Immigration Canada
Economic Policy and Programs
300 Slater Street
Jean Edmonds North Tower, 7th Floor
Ottawa ON K1A 1L1

Dear Mr. Davidson,

The National Citizenship and Immigration Law Section of the Canadian Bar Association (the Section) is pleased to provide you with its views concerning Citizenship and Immigration Canada's (CIC) proposed changes to the criteria for the selection of independent immigrants.

Overview

Since regulatory changes that preceded implementation of the National Occupational Classification (NOC) in Canada's immigrant selection system, the Section has had concerns about the deviation from what is largely viewed as Canada's approach to immigrant selection in the last half of the 20th century, namely to select immigrants of varying skills and education. Canada has not met its immigration targets for approximately seven years, the last year being a notable exception. Numbers, however, tell only part of the story, as policy, resources, demand, and other issues have an impact on them.

The Government has taken many steps in the previous two mandates that, intentionally or not, have reinforced negative aspects of immigration selection in the mind of the public. The Section commends the recent efforts of Minister Caplan to reverse this trend. For example, in a speech delivered at the Rotary Club of Toronto-Don Valley on January 18, 2001, the Minister stated: [S]ome people harbour lingering doubts about immigration. They wonder if we cannot push the barriers higher still. They wonder if the welcome Canada offered a generation ago is no longer realistic. So, is the promise of immigration to Canadians and newcomers alike over? Is it time to raise the barriers far, far higher? I firmly believe — our government firmly believes — the answer is no to both questions.”

In the same speech, the Minister also stated:

Yes, many newcomers do start off well behind other Canadians when it comes to earnings on the job. But when you fast forward about 15 years, most reach and many do even better than the average person born in Canada. The evidence is clear from the

experience of people who arrived in Canada during the recession of 1981, 1982 and 1983. That, too, was a tough time. But research done for my department shows an interesting fact that critics sometimes ignore. Those people who arrived in Canada in the recession years of the early '80s earned above-average incomes by the mid-1990s compared in general to those born here.

The Section has made the same argument — not to lose sight of the historic contribution of immigrants to Canada and not to set the bar so high as to exclude those who would make good immigrants. Yet the Minister's predecessor implemented use of the NOC, which disqualifies approximately one third of those who would have qualified before. If the new selection model is adopted as proposed, this trend may not be reversed and may restrict immigration even more.

Notwithstanding the Minister's positive comments about supporting raised levels, the discourse surrounding the proposed immigration legislation and the changes to Canada's selection system for economic immigrants suggests that instead of focusing on immigrants of varying skills and education who are motivated to establish themselves successfully in Canada, CIC favours a policy focusing only on admission of those who meet a narrow, subjective interpretation of what has been described as the "best and brightest". This equates "best and brightest" with academic education and language fluency. Apparently based on the CIC's longitudinal study of immigrants who arrived under previous selection systems, these factors are seen to produce the greatest likelihood of economic success. The premise is that this defines the best immigrants for Canada. The shift away from the traditional diverse mix of immigrants to a more limited pool of white collar applicants, represents a fundamental change in Canada's immigration policy, one which the Section believes should be debated forthrightly and publicly in Parliament.

The Section has serious concerns about the proposed model. It is our hope that this document will assist the Government in refining the proposed model so that it effectively meets the Minister's stated policy objectives. It is in this context that we make our comments.

Toward a New Selection Model

The Section agrees with CIC's stated goal to formulate a new selection system which is more (although not exclusively) objective, predictable, cost effective to administer, modern, and no longer focused on a person's intended occupation. The Section is, therefore, generally supportive of effecting change in this area.

That said, the Section has serious concerns regarding the number and quality of successful applicants the proposed system would yield. In the course of discussions between CIC and the Section, CIC has objected to such concerns being raised when the pass mark has yet to be set. Nonetheless, given CIC's efforts to raise the bar for acceptance in recent years, its preference to restrict the pool to the

“best and brightest”, and insufficient provision for admission of tradespeople as immigrants at first instance, it seems reasonable to conclude that the new selection grid will further raise the bar over which one qualifies for immigration to Canada.

Proposed Selection Factors

Education

On a more positive note, the Section supports the simplification of criteria for assessment of the education factor. The current system is difficult for both applicants and officers to interpret. This leads to uncertainty in application.

However, it is difficult to comment on this factor without knowing the pass mark. We presume that it will be set so that applicants who attain 15 points or less for the education factor, but who score 10 points for age, 16 for language and 20 for experience, would likely require additional points to be successful. This would effectively bar the majority of skilled tradespeople from entering Canada initially as permanent residents, since they are often in trades that do not require the type of education that would yield more than 15 points. Very few trades, if any, require two or three years of post-secondary education. We are not aware of any schools in Canada that offer a three year program for any trades. Many programs are for one to two years. Others are offered on a part-time basis through continuing education rather than as full-time courses at community colleges. Training for computer professionals, for example, often consists of one to two year college programs and/or a series of modules which are not part of a longer program.

The proposed model is designed to effectively require most skilled tradespeople to become permanent residents of Canada by first entering Canada as temporary foreign workers and then earning enough points while in Canada to eventually qualify for permanent resident status. We question whether potential applicants and their families would be willing to relocate to Canada without sufficient security of knowing that permanent resident status can be obtained. It is not enough to offer Employment Authorization holders in the skilled trades the ability to convert to permanent resident status after coming to Canada if the selection system could change before they can earn enough additional points to qualify for immigration. Lack of predictability will discourage migration. A model that would force most foreign skilled tradespeople to come to Canada as temporary workers, with only a modest possibility of securing permanent resident status, would not encourage migration of people whose services are often not readily available in Canada.

As an alternative, the Section recommends that consideration be given to one of the following models:

Model 1 — Award points awarded for education as follows:

- doctorate and master's degrees - 25

- bachelor's degree involving equivalent of at least three years of full-time study - 20
- two-year equivalent of full-time studies or training leading to a degree, diploma, trade certificate or apprenticeship - 20
- one-year equivalent of full-time studies or training leading to a diploma, trade certificate or apprenticeship - 15
- secondary school - 5

This would reward skilled tradespeople for reaching the level of education normally required to perform in their occupations, rather than set standards unrelated to whether they can perform their trades and thus economically establish themselves in Canada.

Model 2 — Entitle persons to be landed after they spend a period of time in gainful employment in Canada, similar to the Live-in Caregiver Program.

This would have the effect of giving people the relative certainty necessary to attract them to Canada. People working in Canada for two years in a validated or recognized occupation, for example, would accumulate the additional points necessary to pass the selection system.

Model 3 — Create a differential pass mark for persons from defined occupations.

This model was proposed by CIC during the last selection review. While it has the disadvantage of hearkening back to an occupation oriented selection model, it would allow a simple method of ensuring diversity and meeting economic needs.

It has been suggested that the failure of the selection model to accommodate most skilled tradespeople is intentional, so that the federal selection model is used to make the easiest selection decisions and applicants in the skilled trades are offloaded to provincial nominee programs. The Section would view this as a less acceptable alternative than the other solutions canvassed here, as there are differing attitudes among the provinces toward such programs. Indeed many provinces, most notably Ontario, do not participate in such programs.

Language

The Section is concerned that the model does not state the manner in which points will be assessed for the language factor. It notes that the assessment should include speaking, writing, reading and comprehension. The weighting of these elements, and the standard for “fluent” and “well”, are also not articulated. This makes it difficult to comment on the appropriateness and likely impact of this factor relative to the others. We also note that fluency in one official language is weighted less heavily than education and experience, particularly since most applicants would not have fluency in a second official language. We assume that the data supports this weighting.

We cannot comment fully on the discrepancy between the points awarded for “fluent” and “well” without knowing the standards to be applied. We note that the discrepancy between the points awarded for “fluent” and “well” is too great, unless fluency is replaced with a lesser standard. The large gap between “fluent” and “well” will disadvantage persons from non-English or French speaking countries, as it is less likely that they will achieve a high level of fluency.

The Section supports the voluntary use of standardized language tests as a means of assisting officers in their evaluation of language skills.

Experience

The Section supports awarding experience points based on the lead statement and main duties in the occupations claimed by applicants, elimination of consideration of the employment requirements stated in the NOC, and rewarding experience in various occupations. These are all very positive developments.

Given the significant weighting of work experience under the proposed model, and the relatively dramatic point progression between each year of experience, many recent graduates would be disadvantaged under the proposed model, perhaps critically. This proposed factor does not take into account that many knowledge-based industries would be pleased to attract skilled workers directly from university. Having to admit these people as temporary foreign workers in the manner contemplated for the trades may have the effect of discouraging people from relocating to Canada. These people may have the most cutting edge education and would be able to improve and modernize our knowledge-based economy.

As we see it, Canadian employers often undervalue foreign work experience. We therefore question whether the model should place such a high relative weight on this factor.

Of course, even though the weighting for experience is high, relative to the weight of factors other than education, the impact will depend on the pass mark. It is difficult to propose specific points for the experience factor without this information. At this time we recommend that consideration be given to reducing the disparity between one and four year’s experience. Jumping in three-point rather than five-point increments could do this.

Validated Arranged Employment

The Section’s preference would be to have validated arranged employment issued in support of an immigration application serve as full satisfaction of selection criteria, other than those pertaining to admissibility. This would go some way toward solving recruitment issues mentioned above in relation to recent graduates and skilled tradespeople.

Alternatively, boosting the points for the validated arranged employment factor could mitigate the Section's concerns with respect to the experience factor.

There is considerable benefit to using the Human Resources Development Canada (HRDC) permanent validation process as a means of attracting immigrants with a demonstrable ability to support themselves in Canada, and in improving the numbers of independent immigrants. However, there is work to be done in joining HRDC in the objective of facilitating immigrant selection. At the moment, there are inconsistent attitudes amongst HRDC offices in the criteria for approval of permanent validations.

This brings us to the question of who should qualify for permanent residence if we adopt the Live-in Caregiver Program model. Would it only be for skilled tradespeople and recent graduates who could not meet the point system? CIC and HRDC could work together to streamline this process by designating sectors in which chronic shortages are identified and national permanent validations are issued and locked in when the person enters Canada as a temporary foreign worker. The point is that solutions to encourage migration of these people can be found using combinations of procedures that already exist in our present system, making implementation in the context of a new selection model reasonable and efficient.

Adaptability

The proposed model for awarding points for adaptability is an improvement over previous drafts. However, we note a ceiling of ten points on this factor. We see no reason for a ceiling at all. If each factor is worth points, their value should not diminish for a person with a greater number of the listed factors. People should be given full credit for their adaptability.

We note also that a limit on the number of points awarded for adaptability could have the effect of eliminating the benefit of having a Canadian relative, a trend that runs counter to our sense of current support for meaningful policies which promote family reunification.

Age

The authors of the proposed model noted that the Government received contradictory representations on how points should be awarded for this factor, i.e. whether to reward younger or older applicants. As a result, the decision was made to retain the status quo, which has the effect of minimizing the impact of the age factor relative to others. If no data supports the model in this respect, then the integrity of the selection system is undermined by an arbitrary age bar, in that it could disqualify a person due to age when there may be no logical reason for doing so.

This year, Statistics Canada reported that the number of workers aged 24 to 45 declined for the first time since this statistic has been recorded in Canada. In contrast, the percentage of people between the

ages of 45 and 64 has increased in each of the past five years. It is expected that, to counter a growing shortage of workers, the normal age of retirement will increase to roughly 70 from the current 65 years of age. Thus, economic immigrants can be expected to contribute to Canada's economy through longer participation in the labour force. Further, the Centre for the Study of Living Standards reports that workers over 45 are at their most productive.

With this in mind, we suggest that there is an argument for expanding the range of age earning full points.

The Section recommends that ten points be awarded for the age factor to applicants who are 19 (consistent with the Act) but not yet 50, and that five points be awarded to applicants who have turned 50 but not yet turned 55. All other applicants should get no points for the age factor.

Distribution of Points

The Section is concerned about the distribution of points, particularly in the areas of education and experience. If the pass mark is set so that a difference of five points could result in failure, the Section wonders whether the difference between a one year or two year diploma, a two year or three year diploma, one or two years' experience, two or three years' experience, or three or four years' experience, should result in the rejection of an application. The Section doubts that such a minor difference in qualifications would make the applicant that much more likely to fail as an immigrant than someone with the additional year of education or experience. Perhaps the spread between the points should be reduced to minimize this possible effect and to more properly reflect the relatively minor differences between these levels.

The Pass Mark

The current selection system allows the Minister to adjust the pass mark downward or (by regulation) to raise the units awarded for the demographic factor so as to increase the number of successful applicants. We note, however, that this has not been done for many years and particularly not in years that Canada failed to attain announced levels. We are therefore concerned that Ministers may not be willing to lower the pass mark as a means of achieving levels in years in which Canada is in danger of not meeting desired levels.

The Section is of the view that the pass mark should fluctuate as a means of meeting levels. The policy underpinning for this suggestion may be found in a recent report of Statistics Canada which took the position that Canada must dramatically boost immigration levels to counter the social and economic impact of an aging population.

Modeling

We understand that CIC has undertaken some modeling of how the proposed selection model would function to select applicants. It would assist us in commenting on this and future models if you could provide the information on the modeling results, both with respect to present and future proposed selection criteria.

Conclusions

The Section applauds CIC's efforts to modernize Canada's selection system and understands that no system will be perfect. We suggest the proposed model be refined prior to implementation.

The Section is particularly concerned that the model will discourage migration of tradespeople whose skills are in short supply in Canada, as well as recent graduates entering the knowledge-based economy. The Section has made some suggestions in this regard.

We trust CIC will give careful consideration to our comments. We appreciate the opportunity to inform you of our concerns.

Yours very truly,

Michael A. Greene
Chair
National Citizenship and Immigration Law Section

cc.
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