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Via email: Matthew.Graham@cic.gc.ca

Matthew Graham
Acting Director, Economic Immigration Policy and Programs Division
Immigration Branch
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Mr. Graham:

Re: Proposal for a Canadian Business Experience Class

I am writing on behalf of the Immigration Law Section of the Canadian Bar Association (the CBA Section) to propose the creation of a new business immigration class – the Canadian Business Experience Class (CBEC). The CBA is a national association of over 36,000 lawyers, notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. The CBA Section comprises lawyers whose practices embrace all aspects of immigration and refugee law.

We understand that Immigration, Refugees and Citizenship Canada seeks to attract additional innovative entrepreneurs and executives to contribute to the development of Canadian technologies. These are different kinds of individuals, although they may share some characteristics. However, it is difficult at present for innovative entrepreneurs to come to Canada to establish a business and immigrate. The Start-Up Visa Program is difficult for its intended beneficiaries to use in practice. Canadian venture capital groups, angel investors and business incubators have no shortage of would-be Canadian entrepreneurs seeking funding. Foreign entrepreneurs seeking financial backing from these groups face further difficulties because of issues such as distance and language and cultural differences. In short, foreign entrepreneurs with innovative ideas and capabilities have great difficulty attracting the interest of Canadian funders. We believe our proposed Canadian Business Experience Class could meet these needs.

Canadian Business Experience Class (CBEC)

Basic Requirements: To qualify for permanent residence under the CBEC, the applicant would be required to establish:

- management of a qualifying business in Canada for at least two of three years before the date of application; and
- ownership of at least 33 per cent of the shares in the qualifying business during the relevant two-year period.

Qualifying Business: A qualifying business would be a business established in Canada that:

- has created at least three full-time equivalent (FTE) positions (at 30 hours per week) per applicant (if more than one entrepreneur applicant), other than for the entrepreneur or a family member of the entrepreneur; and
- has done so for at least two years.

Employment Created or Maintained: For the three FTE positions:

- The employment positions could either involve employees on the company payroll or contractors working for the company;
- If an existing job was maintained (rather than created), this would count as an FTE.

Language requirements: CBEC applicants would be required to possess minimum language skills. We suggest a minimum level of proficiency similar to that for the Federal Skilled Trades Class (FSTC) category, or the speaking and listening proficiency required to obtain Canadian citizenship.

Express Entry: Applicants under this category should be awarded 600 points towards Express Entry (EE) under the new CBEC and they could then enter into the EE pool once they meet the above requirements. They would be processed to become permanent residents like others in the pool.

Rationale for the CBEC Criteria

It is difficult to identify the criteria that define innovative entrepreneurs and those who can develop technologies. Selection criteria such as age, education, language abilities, and even net worth may not be adequate in identifying the quality candidates that Immigration, Refugees and Citizenship Canada seeks. Consider:

- a. *Educational credentials alone do not turn out entrepreneurs.* Some of the wealthiest immigrants we have helped were high school dropouts. Bill Gates, Steve Jobs and Mark Zuckerberg were college dropouts. We recommend that educational credentials not be a factor for CBEC.
- b. *Language abilities and testing:* We recommend the FSTC language proficiency level or the citizenship tests for speaking and listening as the baselines, since applicants will have already demonstrated their ability to run a business in Canada.
- c. *Personal net worth:* Immigration, Refugees and Citizenship Canada and provincial nominee programs have in the past included a net worth requirement for business immigrant categories. The rationale appears to be twofold:

1. *It is an indication of the immigrant's success in business.* However, the person's wealth might have been inherited, they may own a home that increased greatly in value or might have become wealthy through the stock market. The money that entrepreneurs make from their own business – be it manufacturing, trading, or technology – is often a small fraction of their total net worth, as they make most of their money in other ways.
2. *It is an indication of the ability to invest in a business in Canada.* This is certainly a valid criterion. However, advances in technology mean that business models often require a fraction of the investment capital that would once have been needed to establish a successful business.

For these reasons, we see no benefit to having a specific personal net worth requirement for the Canadian innovator class and recommend that it be eliminated. If an individual has enough wealth to establish a Canadian business and hire three Canadians for two years, that should suffice to prove their ability to establish the business.

The best test of a successful entrepreneur of any kind in Canada is their track record – whether the person has succeeded. This is the merit of the proposed CBEC. Foreign entrepreneurs who come to Canada, obtain work permits and establish a business employing Canadians for at least two years contribute much to the Canadian economy and their entry and immigration should be facilitated.

Taking this approach would be in line with Immigration, Refugees and Citizenship Canada's overall direction – i.e., enter as a worker and then transition to permanent residence. Consider:

- The Canadian Experience Class Program selects immigrants who have proven that they can become economically established in Canada as skilled workers;
- Business Provincial Nominee Programs (PNPs), such as BC's, have a two-step process. An entrepreneur receives a two-year work permit to establish a business under agreed conditions. An entrepreneur who satisfies the conditions receives a PNP nomination;
- The Live-in Caregiver Program now allows caregivers to come to Canada under work permit types and to apply for permanent residence after two years of Canadian experience.

Work Permits for Applicants

Applicants will need work permits (WPs) to come to Canada to establish a qualifying business in the two or three years before making an application for permanent residence. They can now obtain the following WPs:

- Investor work permits, similar to North American Free Trade Agreement (NAFTA) or other free trade agreement (FTA) investor work permits;
- Owner Operator Labour Market Impact Assessment (LMIA)-based work permits;
- Significant Benefit work permits pursuant to section 205(a) of the *Immigration and Refugee Protection Regulations* (IRPR);
- Intra-company transfers (ICT);

- Work permits for spouses or common law partners of study- or work permit holders;
- International students on post-graduation work permits (PGWP);
- International Experience Canada (IEC) workers.

A dedicated work permit path for CBEC candidates would be desirable as there are limitations (described below) under the existing paths:

- NAFTA and FTA WPs apply only to citizens of about seven countries;
- Owner Operator LMIAAs are assessed by Employment and Social Development Canada (ESDC), and processing times are lengthy and unpredictable;
- Significant Benefit work permits are handled inconsistently, as the Foreign Worker guidelines are unclear;
- ICTs work only in limited situations;
- Spousal/Common Law WPs or PGWPs are of limited duration;
- IEC work permits are of very short duration.

Proposed Additional Work Permit Category for CBEC Candidates

In addition to the above categories, we propose a new WP category, set out in 1 below.

- 1. Investor work permits, similar to NAFTA or other FTA investor work permits.** At present, applicants for NAFTA investor permits must establish that they:
 - a) are citizens of the USA, Mexico, or other qualifying FTA country;
 - b) have made, or are in the process of making, a “substantial investment” in a business in Canada;
 - c) are coming to Canada to develop and direct that business; and
 - d) otherwise comply with existing measures for temporary entry.

No minimum investment is required for a “substantial investment.” A proportionality test is used instead. The Immigration Manual outlines several tests to ensure economic benefit from the business enterprise.

In items 2 and 3 we propose ways to improve two of the existing categories.

- 2. Clarification on Owner Operator LMIAAs:** Section 203(1) of the IRPR provides that work permits may be issued to foreign nationals whose proposed Canadian employer has obtained an opinion from ESDC that the job offer is genuine and would likely have a neutral or positive effect on the Canadian labour market. The last policy directive appears to be a Temporary Foreign Worker Program bulletin dated April 15, 2011, from Andrew Kenyon, then Director General of the TFW and Labour Market Information Directorate at ESDC national headquarters.

Entrepreneurs coming to Canada to establish or purchase a business would not take jobs from Canadians. They would also likely have a positive, or at least neutral,

effect on the Canadian labour market. This would be a very useful vehicle for CBEC candidates to come to Canada.

3. **IRPR Section 205(a) – significant benefit to Canada:** A policy could be developed to help entrepreneurs obtain work permits on the basis of job creation. Policy C11 was previously used for entrepreneurs or self-employed applicants who had filed a permanent resident application and were requesting early entry to establish their business. Though this Policy would likely need significant changes, this could be easily done.

Thank you for your willingness to consider our views. Please do not hesitate to contact us to discuss this proposal.

Yours truly,

(original letter signed by Eugene Oscapella for Stéphane Duval)

Stéphane Duval
Chair, CBA Immigration Law Section