



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

# FW 1

## Foreign Worker Manual

## FW 1 Foreign Worker Manual

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### Updates to chapter

#### Listing by date:

**Date: 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 port of entry 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 port of entry.

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 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 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".

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### 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 "Confirmation 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 a job offer confirmation opinion from Human Resources and Skills Development Canada (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)

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- 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 HRSDC confirmation (R203)

- updated Web addresses given for national confirmation letters
- cooperation between HRSDC and 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 confirmations. 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)(l)), C30

- The program for "Scientists...invited by any Canadian institution...provided the Minister of State 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

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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.

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## 1. What this chapter is about

This chapter explains the Regulations and CIC's 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.

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## 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.

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## 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 Act due 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           |



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|                           |      |
|---------------------------|------|
| 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 Representative/Release of Information                           | IMM 5476B |

## 4. Instruments and delegations

A6 authorizes the Minister to designate officers to carry out specific duties and powers and to delegate authorities. In addition, in accordance with A6(2), the director of Economic Policy and Programs, Selection Branch, has been delegated authority by the Minister to designate work that can be performed by a foreign national in accordance with R205(c).

## 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 or commission is earned, or that competes directly with activities of Canadian citizens or permanent residents in the Canadian labour market.

#### “ Wages or commission”

If a person performs an activity that will result in them being paid or receiving remuneration, they will be engaging in work. 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?

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- 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 not considered to be work 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 port of entry 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.

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#### 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)

##### 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, pipefitters, 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. 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 confirmed work permit is required.

##### 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 for longer than six months, their personal employee is no longer considered to be a business visitor and must seek an HRSDC-confirmed work permit.

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#### 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.)

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#### 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.)

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### 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.

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### 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 port of entry 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 HRSDC confirmation. However, spouses may qualify for a confirmation exemption under the Spouses of Skilled Workers Program R205(c)(ii), CEC C41.

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

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

R186(b) allows full time students registered at a degree-granting institution to work on the campus of the institution at which they are registered without the need for a work permit .

R186(b) applies to students engaged in full-time studies at a university, community college, CEGEP or publicly funded trade/technical school. It also applies to private institutions authorized by provincial statute to confer degrees. It applies to all courses of study (including ESL/FSL) as long as the course is full-time.

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R186(b) applies to students working at any number of jobs on campus, as well as students working as graduate, research or teaching assistants at facilities off campus in research related to their research grant. These facilities could include teaching hospitals, clinics, research institutes, etc., which have a formal association or affiliation with the learning institution.

“On campus” is defined as employment facilities within the boundaries of the campus. The students are only allowed to work only on the campus of the educational institution at which they are registered. If an institution has more than one campus, the student can work at different locations on that campus provided it is within the same municipality. If an institution has campuses in different cities, the student is restricted to the institution’s campus where they are registered.

There will be cases of students working on campus as graduate, teaching or research assistants. In certain circumstances, the work to be performed will require the student to be located at a library, hospital or research facility affiliated with the institution but located outside the physical limitations of the institution’s campus. This is allowable, provided that the research being conducted is strictly related to the student’s research grant.

The employer can be the institution, faculty, student organization, the student themselves (self-employment), private business, or private contractor providing services to the institution on the campus.

Some universities located in city centres have campus grounds widely dispersed among general populated areas. This definition includes such employers whose businesses serve the general consuming public, insofar as the place of business is technically located on the university campus.

### **Eligibility:**

To be eligible for employment on campus the student must:

- be in possession of a valid and subsisting study permit;
- be registered in a degree/diploma-granting course of study at an approved institution;
- be registered at the educational institution as a full-time student;
- work on campus at the institution to which they are registered, whether for the institution itself or for a private business located on campus.

In addition, students working as graduate assistants, teaching assistants or research assistants will be considered to be within the scope of “on campus” employment provided:

- the student has been recommended by officials of their department;
- the work to be performed is directed by a department head or a faculty member; and
- the work takes place in a research institute or program in an affiliated hospital or research unit.

Notation to be included on the study permit:

“May accept employment on the campus of the institution at which the holder is registered in full-time studies”.

### 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 confirmed work permits.

| Entry without a work permit  | Work permit and confirmation required   |
|--|---|
| <ul style="list-style-type: none"> <li>Foreign-based musical and theatrical individuals and groups and their essential crew, outside bars and restaurants;</li> <li>street performers (buskers), DJs working outside a bar, restaurant or similar establishment;</li> <li>a foreign or travelling circus;</li> <li>guest artists (not employed) within a Canadian performance group for a time-limited engagement;</li> <li>World Wrestling Entertainment (WWE) wrestlers (&amp; similar groups);</li> <li>persons performing at a private event, such as a wedding;</li> <li>air show performers;</li> <li>artists attending or working at a showcase.</li> </ul> | <ul style="list-style-type: none"> <li>Bands performing at bars, pubs, restaurants, etc.;</li> <li>Exotic/Erotic (new NOC title) dancers performing in a bar or club;</li> <li>actors, singers, crew, etc. in Canadian theatrical productions, shows, circuses;</li> <li>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 confirmation under R204, CEC T10);</li> <li>any individual who will be in an employment relationship with the organization or business contracting for their services in Canada;</li> <li>a performer in a Canadian-based production or show.</li> </ul> |
| <p><b>Note:</b> The following persons will be granted entry as visitors pursuant to Regulations other than R186(g):</p> <p>as business visitors:</p> <p>film producers;</p> <p>film and recording studio users (limited to small groups renting studios not entering the labour market);</p> <p>as guest speakers:</p> <p>persons doing guest spots on Canadian TV and radio broadcasts.</p>   |   |

#### "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 is 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 confirmed work permit.

### "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 confirmed work permit 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 an HRSDC-confirmed work permit 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.

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### 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 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.

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**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.

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### 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 confirmation pursuant to R205(b), CEC C20.



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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 HRSDC-confirmed work permits, 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), CEC C20. Reciprocity is assumed for judges and referees at top-level professional competitions, but referees for lower level games or competitions must seek confirmation unless reciprocity is proven.

### **Spouses**

Professional athletes are classified under Skill Level B in the National Occupational Classification, and, as such, their spouses are eligible for confirmation-exempt work permits pursuant to R205(c)(ii), CEC C41.

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## **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 Canadian events. 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.

### **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), CEC 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.);

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- 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 HRSDC-confirmed work permits. 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 HRSDC local office (HRCC). Generally, a three-week lead-time is necessary for HRCCs 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 HRCC assistance where necessary. This includes contacting the respective union or guild representing the occupations for which the foreign workers are being requested.

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### **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.

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### **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.

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

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See Appendix H.

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### **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 5.40, Charitable and religious work R205(d), C50

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### 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.

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

Eminent individuals who direct the studies and review the work done by scholars that are under their tutelage will, on occasion, enter Canada to review their scholar'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)].

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### 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.

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

Foreign students 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.

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**Note:** Persons entering to do this type of work are required to pass an immigration medical exam according to R30.

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### 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.

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### 5.19. Work without a work permit R186(r)—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.

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### 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.

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### 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 Emergency Preparedness Canada. All persons responding to such emergency situations may be admitted as visitors regardless of whether there is an agreement in existence or not.

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### 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. 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.

### 5.23. Application for a work permit on entry R198

| Persons who may apply at a POE (provided they are not identified in the 2 <sup>nd</sup> column)  | Persons who must apply outside Canada   |
|--|---|
| <ul style="list-style-type: none"> <li>• All nationals or permanent residents of the U.S., and residents of Greenland and St. Pierre and Miquelon (contiguous territories);</li> <li>• Persons whose work does not require HRSD confirmation;</li> <li>• Persons whose work requires HRSD confirmation, as long as the confirmation has been issued before the worker seeks to enter.</li> </ul> | <ul style="list-style-type: none"> <li>• All persons who require a TRV;</li> <li>• All persons who require a medical exam, unless valid results are available at the time of entry;</li> <li>• International youth exchange program participants other than U.S. citizens, unless approved by the responsible visa office (that administers the DFAIT-granted quota) abroad (CEC C21). (See Section 5.34.);</li> <li>• Seasonal agricultural workers;</li> <li>• Live-in caregivers.</li> </ul> |

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 to Canada meets the requirements of R198 and R200, their work permit application should be processed at the port of entry.

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  |
|---|
| <ul style="list-style-type: none"> <li>• Holders of work or study permits and their family members;</li> <li>• Persons who don't require a work permit who are applying for secondary employment in Canada as long as they are not business visitors;</li> <li>• Holders of temporary resident permits (TRPs) valid for a minimum of six months and their family members;</li> <li>• Refugee claimants and persons subject to an unenforceable removal order;</li> <li>• 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&amp;C;</li> <li>• Persons whose work permits were authorized by a mission abroad, where the permit was not issued at a port of entry;</li> <li>• 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.</li> </ul> |

These provisions are in accordance with reciprocal arrangements;

- Foreign nationals who have the written permission of Foreign Affairs to work at a foreign mission (embassy, consulate or high commission) in Canada.

### 5.25. Work permits requiring HRSDC confirmation R203

R203 provides the authority for officers to issue work permits on the basis of a labour market opinion or confirmation from Human Resources and Skills Development Canada (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 a labour market opinion 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 confirmation process see <http://www.hrsdc.gc.ca/en/epb/lmd/fw/tempoffers.shtml>. Through this Web site officers can also see details of specific instructions for entertainers, academics, etc.

Officers should also be aware that there are several industry-specific programs at HRSDC Ontario Region. Among these are special programs for CREWS (construction workers) and tooling and machining trades. Information is available on their Web site at <http://www.hrsdc.gc.ca/asp/gateway.asp?hr=en/on/epb/fwp/fwp.shtml&hs=on0>

#### National confirmation letters

HRSDC has provided several national labour market opinions for foreign workers that apply to all foreign workers who have job offers in the described fields. Thus far, National Confirmation Letters exist and are in force for the following work situations:

- Canada Research Chair Positions <http://www.ci.gc.ca/cicexplore/1976archive/english/guides/om-nso/2000/fw/fw00-03.htm>. Details are also available at <http://www.hrsdc.gc.ca/en/epb/lmd/fw/reschair.shtml>
- IT workers <http://www.ci.gc.ca/cicexplore/1976archive/english/guides/om-nso/1999/fw/fw99-03.htm>. Details are also available at <http://www.cic.gc.ca/english/work/itw.html>

#### Cooperation between HRSDC and CIC

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 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 a confirmation, in some cases it may be helpful to consult directly with HRSDC before advising the applicant to have their employer

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submit an application to them. In all cases where the applicant is advised to have their employer seek confirmation, 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 a confirmation) between HRSDC and CIC 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 a confirmation 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 a confirmation 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.

### **Approval of lower-skilled workers (NOC codes C and D) by HRSDC**

For details refer to <http://www.hrsdc.gc.ca/en/epb/lmd/fw/lowskill.shtml>

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

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### **5.26. Work permits exempt from HRSDC confirmation (confirmation codes)**

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

#### **Confirmation Exemption Codes**

**Note:** A code next to the underlined Regulation reference denotes the generic code, applicable to all but the specific situations noted under the Regulation.

| <b>Regulation</b>                        | <b>Confirmation Exemption Code</b> | <b>X-ref to 1978 Regulations Code</b> |
|--|------------------------------------|---------------------------------------|
| R204 International agreements            | T10                                | B10                                   |
| i) NAFTA/CCFTA Trader                    | T21                                | B21                                   |
| ii) NAFTA/CCFTA Investor                 | T22                                | B22                                   |
| iii) NAFTA/CCFTA Professional            | T23                                | B23                                   |
| iv) NAFTA/CCFTA Intra-company transferee | T24                                | B24                                   |
| v) GATS Professional                     | T33                                | B25                                   |
| R205 Canadian interests                  |                                    |                                       |

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|   |  |   |
|---|--|---|
| a) Significant benefit                                    | C10                                    | E19                                       |
| i) Entrepreneurs  | C11                                    | E01, E03, E05                             |
| ii) Intra-company Transferees                             | 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 recipients             | C44                                    | E45                                       |
| E. Off-campus employment (Pilot)                          | C25                                    | n/a                                       |
| d) Charitable or religious work                           | C50                                    | E20, E25                                  |
| <b>Regulation</b>   | <b>Confirmation<br/>Exemption Code</b> | <b>X-ref to 1978<br/>Regulations Code</b> |
| 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                            | A70                                    |   |
| a) Live-in-caregiver class                                |  | A01                                       |
| b) Spouse or common-law partner class                     |  | A01                                       |
| c) Protected persons under A95(2)                         |  | A03                                       |
| d) Section A25 exemption                                  |  | A01                                       |
| e) Family members of the above                            |  | (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

#### International Agreements R204(a) and (b)

**Summary:** Work permits generally required, but exempt from HRSDC confirmation, CEC T10.

See table below for list of international agreements.

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 temporary residents.

**Note:** See below the chart for instructions relating to R204(c), Agreements with a province.



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### 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 ICAO. Persons entering under diplomatic agreements may be facilitated under R186(b). (See Appendix C.)

### How are agreements listed?

Agreements are listed alphabetically. In instances where details of particular agreements are referred to elsewhere in the manual, the particular manual reference is included.

### HRSDC confirmation exemption codes

Persons admitted under the terms of international agreements and agreements with provinces are confirmation exempt under CEC T10. Except for those otherwise noted, T10 is the code for all of the agreements listed below.

Persons admitted under the North American Free Trade Agreement (NAFTA) or the Canada Chile Free Trade Agreement (CCFTA) are admitted under CEC 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 CEC Codes T33 for Professionals. GATS Intra-Company Transferees are admitted under the general provision R205, CEC C12.

### List of international agreements

| 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 Department of Foreign Affairs. If clarification is required, officers should contact the Arts and Letters Division, Department of Foreign Affairs, at (613)992-5726.                   |
| Bermuda, Professional Trainees                          | Temporary employment in Canada under the terms set out in the Memorandum of Understanding between Canada and Bermuda. Procedures are as follows.<br>People seeking to engage in employment in Canada pursuant to this MOU must:   |

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|  | <ul style="list-style-type: none"> <li>• possess Bermuda status and normally reside in that country;</li> <li>• be graduates of a professional course of a recognized Canadian university or other appropriate Canadian post-secondary institution;</li> <li>• have completed their academic training, but not yet have taken up their profession in Bermuda; and</li> <li>• be selected by a designate of the Bermudian Government to engage in employment meeting the following requirements: <ul style="list-style-type: none"> <li>• 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;</li> <li>• 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.</li> </ul> </li> </ul> <p>Documentation required:</p> <ul style="list-style-type: none"> <li>• a written employment offer;</li> <li>• 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;</li> <li>• a statement that the applicant will return to Bermuda to pursue their profession upon completion of the term of employment.</li> </ul> |
| Canada Chile Free Trade Agreement (CCFTA)      | See <b>Appendix B.</b>   |
| 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.  |
| Emergency Preparedness Canada                  | Emergency Service Providers are facilitated under R186(t), (see Section 5.21). However, from time to time, there are agreements in place with Emergency Preparedness 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 Emergency Preparedness 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 (the Canada-U.S. Fulbright Program); this organization facilitates academic (both work and study) exchanges for participants. Work permits are fee exempt [R299(2)(h)].  |
| General Agreement on Trade in                  | See Appendix D.  |

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| Services (GATS)  |   |
| 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 HRSDC confirmations, 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               | <p>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.</p> <p>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.</p> <p>To engage in employment pursuant to the Memorandum of Understanding, the worker must:</p> <ul style="list-style-type: none"> <li>• be a Malaysian national and normally reside in Malaysia;</li> <li>• 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;</li> <li>• have completed their academic training, but not yet taken up their profession in Malaysia; and</li> <li>• be certified by a designate of the Malaysian Government to engage in employment meeting the requirements of employment as outlined below.</li> </ul> <p>To be considered eligible, the employment must:</p> <ul style="list-style-type: none"> <li>• provide practical experience solely in the profession of chartered accountant, a profession in which the worker will engage upon returning to Malaysia;</li> <li>• 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).</li> </ul> <p>Listed below are the documents that applicants must submit:</p> <ul style="list-style-type: none"> <li>• a written employment offer which can be obtained through the efforts of the worker or with the assistance of the Government of Malaysia;</li> </ul> |

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|---|---|
|   | <ul style="list-style-type: none"> <li>evidence that the appropriate provincial or Canadian professional licensing or regulatory body governing chartered accountants has no objection to the worker articling in Canada;</li> <li>a statement from that applicant that they intend to return to Malaysia to pursue their profession upon completion of employment;</li> <li>a statement from (a representative of) the Malaysian Government certifying participation in the program.</li> </ul> <p>The documentation required to obtain a work permit is presented to the overseas Canadian office unless the worker is already in Canada and is able to obtain a work permit in Canada.</p> |
| NATO  | <p>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.)</p> <p><b>Note:</b> NATO nations are covered by the Status of Forces Agreement (taken from the <i>Visiting Forces Act</i>). Military personnel coming to Canada under NATO, including the civilian component, are exempt from a work permit pursuant to R186(d).</p>  |
| North American Free Trade Agreement (NAFTA)                   | See <b>Appendix G.</b>  |
| 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 Columbia.   |
| Organization for Economic Co-operation & Development (OECD)   | 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 Agreement as it relates to their assignments and should be in possession of their agreements 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                                     | The PSC is an international scientific body created to implement the <i>Pacific Salmon Treaty</i> , signed in 1985 between the governments of Canada and the United States. As with the Halibut Commission, samplers and scientists should be allowed confirmation 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.<br>Supporting documentation: an offer of employment from the Park's Commission. Fee exempt.   |
| Scientific and Technical Cooperation Agreement between Canada | 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.  |

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| and Germany |  |
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### **R204(c) Agreement entered into by the Minister with a Province**

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 a job offer confirmation opinion from HRSDC. 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.

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**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 exemption from HRSDC confirmation.

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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 confirmation 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).

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

Guidelines for general admission under this category are provided in Section 5.29 (CEC C10). Guidelines are also provided for the admission of three other categories of worker, which are considered to be beneficial and not requiring of confirmation from HRSDC. These are Entrepreneurs (CEC 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

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

In considering exemptions to the need for a Human Resources and Skills Development Canada (HRSDC) labour market opinion, or 'confirmation' 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 a confirmation 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 HRSDC confirmation 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 HRSDC confirmation 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.

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 CPC-Vegreville in dealing with requests for renewals, and for audit purposes.

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### 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 Confirmation Exemption Code (CEC) 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.

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**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.

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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 R 205 (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; and
- that the provincial government is of the opinion that the planned business activity will be of significant benefit to the province.

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).

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**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 exemption from HRSDC confirmation.)

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### **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 confirmation 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 a job offer which can be confirmed by HRSDC. 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.

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### 5.31. Canadian interests: Significant benefit—Intra-company transferees R205(a), C12

Summary:

- Applies to senior managers & specialized knowledge workers; work permits required, but exempt from HRSDC confirmation R205(a), CEC C12 (unless they are citizens of the U.S., Mexico or Chile, in which case R204 is the authority, CEC T24).
- Canada has provisions that allow for the transfer of an employee from the foreign to the Canadian branch of an international company. In order to qualify for the Intra-Company Transferee category, a business enterprise “is or will be doing business” in both Canada and the foreign country.

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

Work permits may be authorized under the generally applicable R205(a) (economic benefits), or, for citizens of certain countries, under R204(a) (international agreements). **There are now two categories of Intra-company transferee under the general provision: Senior Managers/ Executives and Specialized knowledge workers.**

#### 1. General provision (applicable to all foreign nationals)

Provided the following criteria are met, the transfer is considered to be beneficial to the Canadian economy and the worker may be issued a work permit pursuant to R205(a), CEC C12. **NOTE that these criteria also apply for persons seeking entry as intra-company transferees under NAFTA, CCFTA, or GATS (with the exception of the specific work permit duration rules for the NAFTA category). In this case officers should use R204(a), CEC T24.**

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See table below for details about the categories of persons seeking entry as intra-company transferees. The eligibility criteria applicable to both the senior managerial and specialized knowledge categories and the documentation requirements are also provided after the table.

### Category descriptions of persons seeking entry as intra-company transferees

| Category                      | Eligibility criteria   | Duration of work permit  |
|-------------------------------|--|--|
| Senior Managers/ Executives   | <p>This group includes persons in the senior executive or managerial categories, carrying 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 of Canada. The holder must be transferring (see the 25% rule below) to a Senior Executive or Managerial level position at a permanent and continuing establishment of that company in Canada for a temporary period. 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:</p> <ul style="list-style-type: none"> <li>• NOC groups 0013 to 0016 should be included;</li> <li>• NOC groups 01 to 09 may be included depending on the responsibility of the position and the impact on employment opportunities for Canadians.</li> </ul> <p>Typically, senior managers:</p> <ul style="list-style-type: none"> <li>• supervise and control the work of: <ul style="list-style-type: none"> <li>• other managers and supervisors;</li> <li>• professional employees, or</li> </ul> </li> <li>• manage an essential function within the organization;</li> <li>• have the authority to hire and fire, or recommend these and other personnel actions;</li> </ul> <p>Excluded are persons who spend the majority of their time in the production of a product or the delivery of a service even though they may have some management responsibilities</p> | <p>depends on the position offered. Long term work permits (a maximum duration of up to three years for a work permit), and renewals of work permits may be issued. However the applicant must continue to satisfy an officer (upon initial application and in considering any renewal applications) that they are entering or in Canada for a temporary period in accordance with R183.</p> |
| Specialized knowledge workers | <p>As in NAFTA, the worker must demonstrate "specialized knowledge". This means specialized 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). The determination of whether a worker possesses</p>  | <p>Maximum of one year. Renewals may be granted such that the total duration of employment in Canada is three years. No renewals under this category may be granted beyond the</p>   |

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|  | <p>specialized knowledge does not involve a test of the Canadian labour market, i.e., 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; that it is truly specialized.</p> <ul style="list-style-type: none"> <li>• <b>Specialized knowledge</b> is unusual and different from that found in a particular industry. The knowledge need not be proprietary or unique, but it should be uncommon. As a general guide, special 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 known and is of some complexity, meaning that it cannot be easily transferred to another individual in the short term.</li> <li>• <b>Advanced knowledge</b> 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).</li> <li>• The person may possess key knowledge which enables them to contribute to the Canadian office's ability to operate competitively in another country.</li> <li>• 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.</li> </ul> | <p>three years (unless the person is entering under NAFTA/ CCFTA, see below).</p> |
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Eligibility criteria applicable to both the senior managerial and specialized knowledge categories are:

- Applicants in the Intra-company category must have worked continuously for at least one year of the previous three years in a similar position for the company that plans to transfer them to Canada. The applicant does not have to be *currently* an employee of the company that plans to transfer 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, and

to spend at least 25% of the duration of their work permit in Canada. If an applicant expects to spend less time than that, officers should examine whether they might better be classified as a business visitor, which includes provision of after-sales service. (See Section 5.2, Work without a work permit R186(a)—Business visitor.)

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.

Documentation requirements:

- confirmation that the person has been employed continuously by the enterprise 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 (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 foreign country. The officer may request tangible proof to establish the relationship between the Canadian and foreign organization wishing to make the transfer.

### 2. NAFTA/CCFTA Intra-company transferees

Appendix G provides terminology explanations relevant to the general provisions and elaborates on documentary requirements, however, the criteria are essentially the same as the general criteria. For applicants eligible under the NAFTA or CCFTA category, officers should process them under R204(a), CEC T24, instead of the generally applicable Regulation noted above.

The duration for a T24 NAFTA work permit is more specific and is noted in Appendix G and in the procedures section of this chapter, Section 11.2.

### 3. GATS Intra-company transferees

The GATS criteria are essentially the same as the general criteria as well. There are 144 countries out of a total of 190 that are members of the World Trade Organization (WTO), and 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), CEC C12.

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#### 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 HRSDC confirmation. They should be in possession of a letter, telex or fax indicating that the nature of their work is an emergency.

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### 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.

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### 5.34. Canadian interests: Reciprocal employment—International youth exchange programs R205(b), C21

International exchange programs allow students and young workers 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.)

The programs are managed by ACEE/DFAIT (tel. 613-996-4527), who negotiate the terms of individual agreements and determine annual numerical limits for the admission of individuals. There are specific multilateral and bilateral exchanges, such as AIESEC and IAESTE, as well as general programs such as the Student Work Abroad Program (SWAP) and Working Holiday Programs (WHP). These are aimed at providing 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 is 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, while WHP participants may apply directly at a mission.

All foreign nationals participating in these programs, except citizens of the U.S., should apply outside 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 mission responsible for their country (i.e., Australians must apply in Sydney, Swedes must apply in London, etc.).

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**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.

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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.

All of the C21 programs are fee exempt.

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### 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), CEC 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), CEC C22 for the situations described below:

#### **Guest lecturers**

Work permits exempt from confirmation 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.

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### 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.

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

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

Confirmation exemption code is C30 for all six programs listed below:

1. foreign students, excluding medical interns and externs and resident physicians (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; (For more information about this program, see Program 1 (C30) for foreign students, excluding medical interns and externs and resident physicians, Section 5.38.)
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.

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#### **5.38. Program 1(C30) for foreign students, excluding medical interns and externs and resident physicians**

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.)

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**Note:** Program 1 only applies for 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.

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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.

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**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.

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### **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 (Program 1) 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.

### **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.

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### **5.39. 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, CEC 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>.
- 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.;

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**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

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#### 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

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

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

#### Eligibility

Applicants must provide evidence that they are:

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- the spouse or common-law partner of a holder of a study permit who is attending full-time a post-secondary institution, which is 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 CEC 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 CEC C43).

### C. Post-graduation employment, C43

Students may accept education-related employment for a maximum period of one or two years (depending on which set of criteria they meet) following successful completion of their studies, without the need for Human Resources and Skills Development Canada (HRSDC) confirmation (work permit with C43 exemption from HRSDC). Note that part-time and self-employment situations are covered under this provision. (For self-employment, a business plan or contract(s) can be submitted in place of a letter from an employer.)

#### General eligibility criteria

- The student must have graduated from a program at a post-secondary institution (as defined in the Note above).
- They must have been engaged in full-time studies. The study must also have taken place at the institution in Canada; distance-learning from outside Canada does not qualify a student for this program.
- Whether the student received a 'degree', a 'diploma' or a 'certificate' is not an issue. However, they must have completed and passed their course of study or program, and the full-time program of study must have been for a duration of at least eight months.
- The application must be submitted within 90 days of formal written notification by the institution to the student that they have met the requirements of the course of study or program. Students who have evidence that they have completed their program (e.g., final transcript, letter from the institution) may apply for the work permit before this formal notification.
- The work permit application should include evidence that the student has completed all of the requirements for the course of study or program. This may include a final transcript, letter from the institution or the formal notification of graduation.
- The work permit application should include a valid employment offer.
- The employment must be consistent with the recently completed course of study (refer to "field of study" below).

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- The student must still be in possession of a valid study permit upon application.
- The student must not have been formerly issued a work permit under this program (exemption C43) following any other course of study.

### Work permit issuance and validity

Officers will issue work permits up to the maximum allowable period, depending on eligibility criteria. Therefore, some applicants will be issued two-year work permits. Officers should no longer follow the previous practice of issuing one-year permits and requiring that students submit an application to extend this work permit for an additional year.

Applicants will be issued work permits according to the regular C43 requirements (i.e., employer, occupation and location-specific).

### Field of study

The intended employment should be consistent with the recently completed program of study. When this is less evident, but an officer is satisfied that the offer is genuine and the work experience meaningful to the student's overall experience in Canada, benefit of doubt should be given to the student.

### Length of work permit

The permit can be valid for **up to two years** for students who

- have studied at and graduated from an institution located **outside** of the Montreal, Toronto and Vancouver metropolitan areas (as defined at <http://www.cic.gc.ca/english/study/work-locations.html>), **and**
- have an offer of employment where the location of the work is outside of the Montreal, Toronto and Vancouver metropolitan areas (as defined at <http://www.cic.gc.ca/english/study/work-locations.html>).

All other students will be issued a work permit that can be valid for **up to one year**.

The validity period of the work permit must not be longer than the period the graduating student studied at the particular post-secondary institution in Canada, up to a maximum of one or two years. For example, if a student graduated from a four-year degree program, they are eligible for a one-year work permit or a two-year permit if they meet the criteria described above. If the student graduated from an eight-month certificate program, they are only eligible for a work permit of eight months' duration. Thus, to obtain a two-year work permit, a student must have studied for at least two academic years.

Extensions beyond the post-graduation work program will require HRSDC confirmation, or approval under another exemption.

### Exception

Students receiving funding from the following sources can receive a post-graduation work permit, but its validity will not exceed one year:

- Canadian Commonwealth Scholarship Program,
- Government of Canada Awards Program funded either by Foreign Affairs Canada or by the Canadian International Development Agency.

### Special cases

In cases where a student has transferred between educational institutions, the student must have graduated from an institution described in the general eligibility criteria above, and the combined time in institutions meeting these criteria must be at least eight months. To qualify for a two-year work permit, the combined studies must amount to a minimum of two years (including graduation), all of which must have been located outside the Montreal, Toronto and Vancouver metropolitan areas (or MTV).

In cases where students already have a one-year post-graduation work permit, they can apply for an extension to their permit. They cannot have been employed in MTV since their graduation and must have graduated from an institution located outside of MTV. They must have studied at least two years for a full year extension. They cannot have already received an extension under the post-graduation pilot projects.

In cases where students have received their work permit in the context of the post-graduation pilot projects, the obligation to stay within the province of study is lifted. If they secure another job offer in another province, they can apply for a change of employer on their work permit.

If the student of an institution which is located outside MTV is studying on the institution's campus which is located within MTV, they will be eligible for a one-year work permit only. For example, the Université de Sherbrooke student located at the Longueuil campus cannot benefit from a two-year work permit.

**Flight Instructors** who meet the following criteria may be issued work permits under the C43 provision:

- the applicant has completed a flight-training course at a Canadian training centre as evidenced by having obtained a Canadian commercial pilot's licence;
- the applicant has obtained, or is in the process of obtaining, an instructor's rating, and has received an offer of employment as a flight instructor from a Canadian flight-training centre.

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**Note:** This need not be the same school at which the applicant was trained.

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Applicants providing these documents may be issued a work permit, valid for a maximum of one year but no longer than the length of their flight training studies in Canada. Any subsequent work permit request or application for extension must be supported by an HRSDC confirmation.

### 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 HRSDC confirmation. 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.

### **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.

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**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.

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## **E. Off-Campus Employment (Pilot), C25**

In order to enhance Canada's competitiveness in attracting foreign students, CIC has signed Memoranda of Understanding with Manitoba, New Brunswick and Quebec to test the provision of open work permits to foreign students for off-campus employment during their studies. The number of hours students are authorized to work varies by province. Students do not need to have an offer of employment at the time of application, nor does the work they perform need to be related to their program or field of study.

Students are eligible if they:

- have been a full-time student for at least one year (i.e., two consecutive terms) at a participating public post-secondary institution and are currently enrolled in full-time studies at this institution (ESL/FSL studies are not eligible);
- possess a valid study permit;
- receive a verification form from a participating public post-secondary institution;
- maintain acceptable academic standing and continue to make satisfactory progress in their specific program of study;
- continue to fulfil the terms and conditions of their study permit and their work permit throughout the course of their studies in Canada;
- sign a consent form authorizing the exchange of personal information between the institution where they are registered full-time, the participating province, and Citizenship and Immigration Canada.

Students are ineligible if they:

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- are studying in Canada with funding from the Canadian Commonwealth Scholarship Program, the Government of Canada Awards Program funded by Foreign Affairs Canada, or the Canadian International Development Agency; or,
- have been previously reported for non-compliance with pilot project conditions.

### Participating Institutions

Participating public post-secondary institutions must sign a memorandum of agreement with their provincial government outlining their respective roles and responsibilities. Participating institutions are listed in the provincial tables below.

Participating institutions play an active role in administering the pilot project. Their role includes:

- ensuring that students meet the eligibility criteria for the pilot project;
- checking applications for completion and submitting directly to CPC-Vegreville;
- monitoring students to ensure that they continue to meet the conditions of their work permits;
- reporting to provincial and federal partners.

### Work permit validity

Work permits under this project shall have a maximum validity of one year. If the student is eligible for a work permit, the officer shall issue a work permit for one year, or to match the validity of the study permit, whichever period is shorter.

### Processing procedures:

Specific instructions for each province are included after the general instructions below.

1. CPC-V will receive application packages directly from the institution, which has verified that they are complete. The application package will consist of:

- IMM 1249 (Application to Change Conditions, Extend my Stay or Remain in Canada);
- IMM 5476 (Use of a Representative/Release of Information);
- Document checklist;
- Photocopies of passport pages, including number, dates of issue and expiry, stamp, etc.;
- Photocopy of study permit;
- Verification form from Institution (ascertaining that the student is registered full-time, has completed two consecutive semesters of full-time study, and has maintained acceptable academic standing);
- Student Declaration and Information Release form;
- Fee Receipt (IMM 5401)

2. The officer will review the documentation and FOSS record to determine student eligibility:

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- Does student meet eligibility criteria listed above? (Academic eligibility as already verified by institution)

- Has student previously been reported for non-compliance as part of the project?

3. If student meets eligibility criteria, the officer will check in FOSS to determine if student has passed an immigration medical examination. If yes, the officer shall issue an open, unrestricted work permit. If no, the officer shall issue an open, occupation-restricted study permit, as noted in section 10 below.

4. Work permit conditions: the officer will add the conditions listed for each province in the tables below regarding hours of work and location of employment

5. The officer will send the work permit or the refusal letter directly back to the contact at the institution. Officers shall not issue work permits for applications received after the end date of the relevant MOU.

| <b>Manitoba</b>                   |   |
|-----------------------------------|---|
| <b>Validity of MOU</b>            | October 31, 2003 – October 30, 2005   |
| <b>Conditions</b>                 | The work permit allows the holder to work in Manitoba to a maximum of 20 hours per week during regular academic sessions and full-time during scheduled breaks (i.e., summer holidays and Christmas).           |
| <b>Participating institutions</b> | Assiniboine Community College<br>Brandon University<br>Keewatin Community College<br><i>Le Collège Universitaire de Saint-Boniface</i><br>Red River College<br>University of Manitoba<br>University of Winnipeg |
| <b>Link to MOU</b>                | <a href="http://www.cic.gc.ca/english/policy/fed-prov/index-man.html">http://www.cic.gc.ca/english/policy/fed-prov/index-man.html</a>   |

| <b>New Brunswick</b>              |  |
|-----------------------------------|--|
| <b>Validity of MOU</b>            | May 1, 2004 – April 30, 2006   |
| <b>Conditions</b>                 | The work permit allows the holder to work in New Brunswick, to a maximum of 20 hours per week during regular academic sessions and full-time during scheduled breaks (i.e., summer holidays and Christmas).          |
| <b>Participating institutions</b> | <i>Université de Moncton</i> (Moncton, Edmundston and Shippagan)<br>University of New Brunswick (Fredericton and Saint John)<br>St. Thomas University<br>Mount Allison University<br>New Brunswick Community College |
| <b>Link to MOU</b>                | <a href="http://www.cic.gc.ca/english/policy/fed-prov/can-nb-mou-2004.html">http://www.cic.gc.ca/english/policy/fed-prov/can-nb-mou-2004.html</a>  |

| <b>Quebec</b>          |   |
|------------------------|---|
| <b>Validity of MOU</b> | May 21, 2004 – May 20, 2006   |
| <b>Conditions</b>      | The work permit allows the holder to work in Quebec outside the census metropolitan areas of Montréal and Québec City, to a maximum of 15 hours per week during regular academic sessions |

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|                                   |  |
|-----------------------------------|--|
|                                   | and full-time during scheduled breaks (i.e., summer holidays and Christmas).   |
| <b>Participating Institutions</b> | <p><b>Note:</b> Only public post-secondary institutions in certain regions of Quebec are eligible for participation in this project.</p> <hr/> <p>Universities</p> <ul style="list-style-type: none"> <li>• Université Bishop's</li> <li>• Université de Sherbrooke</li> <li>• Université du Québec en Abitibi-Témiscamingue</li> <li>• Université du Québec à Chicoutimi</li> <li>• Université du Québec à Rimouski</li> <li>• Université du Québec à Trois-Rivières</li> <li>• Université du Québec en Outaouais</li> </ul> <p><i>CÉGEP s</i></p> <ul style="list-style-type: none"> <li>• CÉGEP Beauce-Appalaches</li> <li>• CÉGEP de Baie-Comeau</li> <li>• CÉGEP de Chicoutimi</li> <li>• CÉGEP de Drummondville</li> <li>• CÉGEP de Granby Haute-Yamaska</li> <li>• CÉGEP de Jonquière</li> <li>• CÉGEP de L'Abitibi-Témiscamingue</li> <li>• CÉGEP de la Gaspésie et des Îles</li> <li>• CÉGEP de la Pocatière</li> <li>• CÉGEP de Matane</li> <li>• CÉGEP de Rimouski</li> <li>• CÉGEP de Rivière-du-Loup</li> <li>• CÉGEP de Saint-Félicien</li> <li>• CÉGEP de Saint-Hyacinthe</li> <li>• CÉGEP de Sept-Îles</li> <li>• CÉGEP de Sorel-Tracy</li> <li>• CÉGEP de Victoriaville</li> <li>• CÉGEP Saint-Jean-sur-Richelieu</li> <li>• CÉGEP de Trois-Rivières</li> <li>• Champlain Regional College</li> <li>• Collège d'Alma</li> <li>• Collège de l'Outaouais</li> </ul> |



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|                    |   |
|--------------------|---|
|                    | <ul style="list-style-type: none"><li>• Collège de la Région de l'Amiante</li><li>• Collège de Sherbrooke</li><li>• Collège de Valleyfield</li><li>• Collège de Shawinigan</li><li>• Heritage College</li></ul> |
| <b>Link to MOU</b> | <a href="http://www.cic.gc.ca/english/policy/fed-prov/index-que.html">http://www.cic.gc.ca/english/policy/fed-prov/index-que.html</a>   |

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

R205(d) applies to charitable or religious workers who are carrying out duties for a Canadian religious or charitable organization. It does not apply to religious workers who are entering to preach doctrine or minister to a congregation, as these people may be admitted pursuant to R186(l).

**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 has a list of all Canadian charities in good standing available through their Web site at [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca)

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.)

Fee exempt.

**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.

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**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.

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### 5.41. 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.

#### **Confirmation 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).]

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**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).

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### 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.

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### 5.42. 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.)

Confirmation 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.

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### 5.43. Humanitarian reasons R208

#### A. Destitute students

Confirmation 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

Confirmation 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.

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## 6. Definitions

Not applicable.

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## 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, HRSDC confirmation, acceptance into a youth exchange program, etc.);

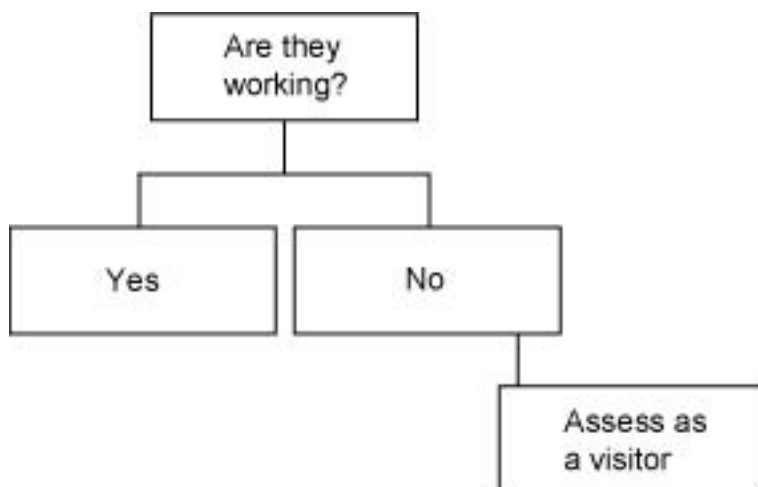
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4. background documents showing the qualifications and experience of the applicant for the employment, if such evidence is required to satisfy the requirements of R200(3)(a);
5. proof of identity (With the exception of citizens and permanent residents 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 documentation required to satisfy the officer that the requirements of the Act or Regulations are met.

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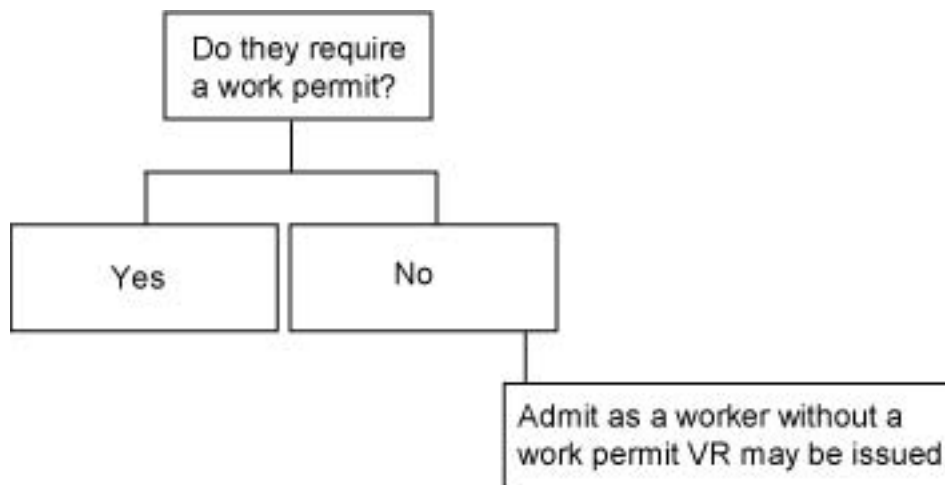
### 8. Procedure: Assessing temporary foreign workers

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?  |  |
|-----------------------------|--|--|
| <b>Yes</b><br>Next question | Definition of R2 “work”<br>Guidelines in policy section (m.5 overview) | <b>No</b><br>Assess as a temporary resident<br>1. examination<br>2. TRV or inland temporary resident manuals |

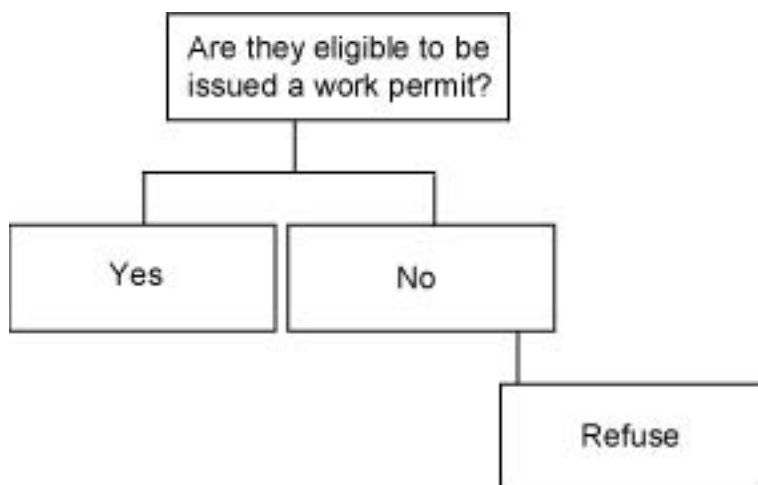
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|                                    | Do they need a work permit?   |   |
|------------------------------------|---|---|
| <b>Yes</b><br><b>Next question</b> | <p>The following persons do not need a work permit:</p> <ul style="list-style-type: none"> <li>• Business visitor</li> <li>• Foreign Representatives</li> <li>• Family Members of Foreign Representatives</li> <li>• Military Personnel</li> <li>• Foreign government officers</li> <li>• On-campus Employment</li> <li>• Performing Artists</li> <li>• Athletes and Coaches</li> <li>• Public Speakers</li> <li>• Convention Organizers</li> <li>• Clergy</li> <li>• Judges and Referees</li> <li>• Examiners and Evaluators</li> <li>• Expert Witnesses or Investigators</li> <li>• Health Care Students</li> <li>• Civil Aviation Inspector</li> <li>• Accident or Incident Inspector</li> <li>• Crew</li> </ul> | <b>No</b><br>Admit as a worker without work permit. VR may be issued R186<br><br>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. |

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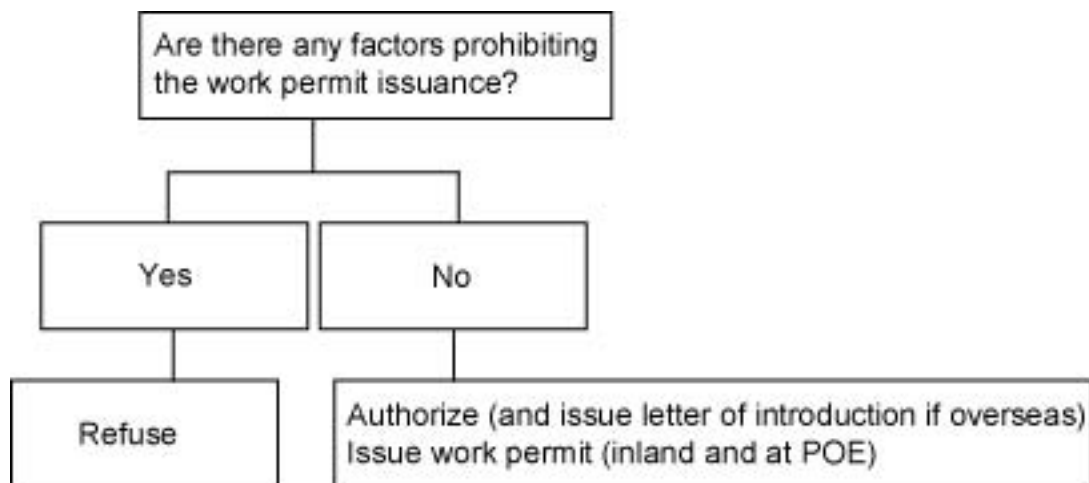
|  |   |  |
|--|---|--|
|  | <ul style="list-style-type: none"> <li>• Emergency Service Providers</li> <li>• Implied Status</li> </ul> |  |
|--|---|--|



|                                    | Are they eligible to be issued a work permit?   |                     |
|------------------------------------|---|---------------------|
| <b>Yes</b><br><b>Next question</b> | a) Are they allowed to apply where they did? R200(1)(a)<br>b) Will the foreign national leave Canada after temporary stay? R200(1)(b)<br>c) Is the foreign national eligible for WP issuance?<br><ul style="list-style-type: none"> <li>• R203, HRSDC confirmation</li> <li>• R204 to R208, Confirmation Exempt</li> </ul> d) If medical exam is required, has it been performed? R30<br>Note: <b>(b) does not apply for CEC S61, S62, nor A70/Protected persons</b><br><b>Consider special work situations</b> <ol style="list-style-type: none"> <li>1. Airline personnel</li> <li>2. Camp Counsellors</li> <li>3. Canada-Chile FTA</li> <li>4. Diplomats</li> <li>5. Fishing guides</li> <li>6. GATS</li> <li>7. International student and young workers exchange programs</li> <li>8. Military</li> <li>9. NAFTA</li> </ol> | <b>No</b><br>Refuse |

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|  |  |  |
|--|--|--|
|  | 10. Oceans Act<br>11. Performing artists<br>12. Sales appendiix<br>13. U.S. government personnel |  |
|--|--|--|



|                      | <b>Are there any factors prohibiting work permit issuance?<br/>R200(3)</b>   |  |
|----------------------|--|--|
| <b>Yes</b><br>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)].<br>b) The worker needs a CAQ and does not have one [R200(3)(b)].<br>c) Would the worker become a strike- breaker by issuance of work permit [R200(3)(c)]?<br>d) If they will be a live-in-caregiver, have they not met the requirements in R112?<br>e) Have they engaged in unauthorized work or study [R200(3)(e)]? | <b>No</b><br>Authorize (and issue letter of introduction if overseas) or issue work permit (inland and at POE).<br>Take into consideration <ul style="list-style-type: none"> <li>• Need for medical exam; R30</li> <li>• Need for TRV; (R190)[<b>see Note below</b>]</li> <li>• Open (Restricted/ unrestricted) or employer specific (See Section 10 below);</li> <li>• Conditions (including duration) (See Section 11 below)</li> </ul> |



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**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).

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## 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).

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### 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;

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

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- agricultural workers from designated countries. (Please refer to Web site: <http://www.cic.gc.ca/english/visit/dcl.html>.)

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### 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 six months. Designated countries are noted at the following address: <http://www.cic.gc.ca/english/visit/dcl.html>.

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### 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 can 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.

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**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.

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### 9.4. At the port of entry

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

Temporary workers who have passed immigration medical requirements before arriving at the port of entry 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.

### 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 to 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.)

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

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### 9.6. In-Canada extension requests

If an officer has issued a work permit (or study permit) for *greater* than a six-month duration to a person who would have required a medical examination under R30(1)(c), it is reasonable to assume that a medical examination was passed even where there is no indication on the document.

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 Immigration Health Services (RHN) 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 RHN 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 RHN 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 RHN.

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.

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### 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.

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### 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.

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### 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.

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## 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 HRSDC confirmation.

---

### 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".

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#### 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), CEC S61 or S62 (see Section 5.41);
- persons described under R207, CEC A70 (see Section 5.42);
- persons described under R208(a) or (b), CEC H81 or H82 (see Section 5.43);
- certain workers admitted on a reciprocal basis:
  - ◆ Canada World Youth Program participants, CEC C20 (see Section 5.36);
  - ◆ certain international student and young worker exchange programs, CEC C21 (some programs are employer-specific vs. being 'open');
  - ◆ family members of foreign representatives and family members of military personnel: confirmation exempt, CEC C20, where a reciprocal arrangement exists (see Appendix F and Appendix C);
  - ◆ professional athletes admitted on the basis of CEC 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 5.39);
- spouses of foreign students, eligible under R205(c), C42 (see Section 5.39).

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

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## 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).

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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.

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- HRSDC confirmation; (Subject to passport validity, officers should issue the work permit for the complete duration of the confirmation 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.

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

| Category                         | Validity period   | Notes   |
|----------------------------------|---|---|
| <b>Professionals</b>             | NAFTA/CCFTA (R204, CEC T23): Work permits may only be issued for one year, with renewals by one- year increments.<br>GATS (R204, CEC T33): 90-day limit per 12- month period  |   |
| <b>Intra-company transferees</b> | NAFTA/CCFTA (R204, CEC T24): Work permits may be issued for the following periods: <ul style="list-style-type: none"><li>• 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; *</li><li>• 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; *</li></ul> General Provisions, which incorporate GATS rules R205(a), CEC C12: Work permits may be issued for the following periods: <ul style="list-style-type: none"><li>• Executives and managers: max. 3 years initially; a renewal allowable as long as the work in Canada is still for a temporary period in accordance with R200;</li><li>• Specialized knowledge transferees: max. 1 year; 1-year renewals may be granted, but the total</li></ul> | * 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. |

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|                                       |  |  |
|---------------------------------------|--|--|
|                                       | period of stay in Canada may not exceed 3 years. *   |  |
| International Youth Exchange Programs | R205(b), CEC 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), CEC 30, 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) CEC C41 or C42 (or under R205(b), CEC 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), CEC C43 Total employment limited to one year.   |  |
| Refugee claimants, etc.               | For work permits issued under R206, CEC S61 or S62, initial validity is 24 months, and renewals may be issued for one-year periods.  |  |
| Destitute students                    | R208, CEC 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, CEC 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 not be issued work permits beyond a one-year validity. See Appendix A of IC2.  |  |

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## 12. Quebec program

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### 12.1. 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 confirmation 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 HRSDC (confirmation), and in cases of live-in caregivers who change employers and obtain new confirmations. No CAQ is required where the employment is exempt from confirmation.

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### 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.

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### 12.3. CAQ requirement

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

- confirmation 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)”.

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### 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 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.

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### 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 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 MICC is advised by Québec to submit the request to HRCC;
3. after assessing the request, HRCC 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 HRCC, 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. 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.

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

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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.



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### 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>.

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## 13. More guidelines for unique situations

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### 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 HRSDC confirmation exempt under R204, CEC T10;
- **station managers** require a work permit but are exempt from confirmation under R205(a), CEC C12, provided they meet the guidelines for Intra-company transferees;
- foreign airline security guards (e.g., EI AI):
  - ♦ 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 confirmation pursuant to R205(a), CEC C10.

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### 13.2. Camp counsellors

Counsellors at day or residential camps require work permits that are confirmed by HRSDC. However, camp counsellors who are working in a volunteer capacity may be issued work permits pursuant to R205(d), C50 *provided they and their employers meet the criteria noted in the guidelines*. C50 work permits are fee exempt.

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**Note:** Canada Revenue Agency has a list of all Canadian charities in good standing available through their Web site at [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca)

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#### 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/visit/dcl.html>

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### 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.

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### 13.4. Foreign camp owner or director

Work permit required, but exempt from confirmation pursuant to R205(a), C11, OR confirmation required in accordance with the guidelines that follow. These guidelines apply whether the camp is a children's recreational facility, or whether the business in question is a hunting or fishing camp:

- The camp owner and their spouse may be issued work permits without HRSDC confirmation. Other members of the foreign owner's family, should they wish to be employed by the camp, will be subject to the confirmation requirement.
- Apply the guidelines for R205(a), C11 in Section 5.30.

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### 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 confirmation exempt pursuant to R205(b), C20. This confirmation 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 HRSDC-confirmed 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 HRSDC-confirmed work permit. For those guides who are self-employed (where there is no employer on either side), officers may issue a confirmation-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.

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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 port of entry 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 <i>Oceans Act</i> . |
| 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 <i>Oceans Act</i> .                        |

Temporary foreign workers need an HRSDC-confirmed 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.

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### 13.7. United States government personnel

Work permit required. HRSDC-confirmation exempt under R204, CEC T10.

Official U.S. government personnel assigned to temporary postings in Canada may include officers of the USINS and U.S. Customs, 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
- USINS 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 HRSDC-confirmation exempt under R205(b), CEC 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.

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**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.

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### **U.S. Internal Revenue Service (IRS) employees**

Work permit required, but HRSDC-confirmation exempt pursuant to R204, CEC T10.

IRS employees will periodically enter Canada to audit, collect and do criminal investigations. IRS representatives require a work permit, but are confirmation 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 HRSDC-confirmed 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 HRSDC confirmation 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 HRSDC confirmation is not required pursuant to R205(b), CEC 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 an HRSDC-confirmed work permit. 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.

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**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).

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### **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 none-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



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- 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 HRSDC confirmation 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, CEC 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, an HRSDC-confirmed work permit 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 HRSDC confirmation. 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](http://www.telefilm.gc.ca))

#### **Criteria:**

Work permit required but confirmation exempt under R204, CEC T10.

### **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 HRSDC-confirmed work permits 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 confirmed work permit.

### **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 HRSDC-confirmed work permits. 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.

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**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.

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### Appendix B Canada Chile Free Trade Agreement

The Canada Chile Free Trade Agreement is a free trade agreement which covers trade in goods, services and investment. The agreement is modeled on the NAFTA. Like the NAFTA, the agreement contains provisions for temporary entry to facilitate, on a reciprocal basis, the movement of business persons. These provisions are contained in Chapter K of the agreement (which is Chapter 16 under the NAFTA).

The basic NAFTA obligation to grant temporary entry to four categories of business persons - Business Visitors, Professionals, Intra-Company Transferees and Traders and Investors - remains the same in the CCFTA. There are, however, a number of minor differences between the chapter on temporary entry of the CCFTA and the NAFTA, 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.

The agreement allows each party to impose or continue to impose a visa on the citizens of the other party.

#### Business Visitors:

As with NAFTA, Business Visitors are business persons who seek temporary entry to carry out activities described in Appendix K-03.I.1 (Appendix 1603.A.1 in the NAFTA). Business Visitors are not considered to enter the Canadian labour market, that is, the primary source of remuneration and the person's principal place of business remain outside Canada. Temporary entry is granted to Chilean Business Visitors pursuant to R186(a).

Like the NAFTA, the Appendix which supports the Business Visitor category is not an exhaustive list but illustrates types of activities usually carried out by Business Visitors. No new activities were added to Appendix K-03.I.1, but some were removed to reflect the two party agreement between Canada and Chile and where the entry of a Chilean citizen under that provision is unlikely:

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

#### Professionals:

The categories of Professionals, Intra-Company transferees and Traders and Investors are administered through R204(a).

Professionals are business persons identified in Appendix K-03.IV.1 who seek entry through some sort of pre-arrangement - as a salaried employee under a personal contract with a Canadian employer or through a contract with the professional's employer in the home country. Like the NAFTA, over 60 professionals are identified in the Professionals list, Appendix K-03.IV.1 (Appendix 1603.D.1 in the NAFTA). Unlike the Appendix which supports the Business Visitor category, Appendix K-03.IV.1 is a complete list and cannot be interpreted.

Each professional identified in the Appendix must hold 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.

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

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

Like the NAFTA, the work permit must be coded using Confirmation exempt code T23.

### Appendix K-03.IV.1

#### PROFESSIONALS

| PROFESSION <sup>1</sup>   | MINIMUM EDUCATION REQUIREMENTS AND ALTERNATIVE CREDENTIALS <sup>2</sup>   |
|---|---|
| <b>General</b>  |   |
| 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) <sup>3</sup> .  |
| Architect   | Baccalaureate or Licenciatura Degree; or state/provincial licence <sup>4</sup>  |
| Computer Systems Analyst  | Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma <sup>5</sup> or Post-Secondary Certificate <sup>6</sup> , and three years experience  |
| 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 |
| 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  |

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|  |   |
|--|---|
| 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 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 Conservationist  | Baccalaureate or Licenciatura Degree  |
| Research Assistant (working in a post-secondary educational institution)   | Baccalaureate or Licenciatura Degree  |
| Scientific Technician/Technologist <sup>7</sup>  | 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  |
| <b>Medical/Allied Professional</b>   |   |
| Dentist  | D.D.S., D.M.D., Doctor en Odontología or Doctor en Cirugía Dental or Licenciatura en Odontología; 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) <sup>8</sup> | 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   |

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|   |   |
|---|---|
| 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 Veterinario (University Title); or state/provincial licence |
| <b>Scientist</b>  |   |
| 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  |
| <b>Teacher</b>  |   |
| 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

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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.



## Appendix C Diplomats (new Manual)

### 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.

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**Note:** Diplomats entering Canada for the first time should not be referred for secondary examination. They have instructions to contact the Department of Foreign Affairs in Ottawa for verification of credentials.

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#### **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 exemption from HRSDC confirmation pursuant to R205(a) confirmation exemption code (CEC) C12, if the criteria are met. Other officials and support staff require confirmation.

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" must be submitted by the employer either to the post or to FAC/Protocol. The post should not issue a visa until FAC/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). Under the parameters of the LCP program, only those who qualify for and obtain work permits as live-in caregivers and work full-time as live-in caregivers for two years in Canada can apply for permanent residence in Canada under the LCP program. Consequently, those who enter Canada on official status as a private servant of a foreign representative will not be eligible for permanent residence under the LCP.

Diplomatic personnel who are interested in having their live-in caregiver enter and remain in Canada under the Live-in Caregiver Program, must provide an employer/employee agreement and the mission must request permission by note to the Office of Protocol, Department of Foreign

Affairs (FAC) stating that they will fulfil all of the requirements and conditions of the agreement. The Foreign representative will then provide a copy of this note, the employer- employee agreement and the response of FAC to the responsible HRCC for the employment offer to be confirmed. If the employment is confirmed, HRCC will inform the employer by letter.

**In summary:**

- No employment authorization required, pursuant to R186(b), if accredited;
- Work permit and HRSDC confirmation required if applying under the Live-in Caregiver Program.

See Circular Note No. 2482 at the end of this Appendix.

#### **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 the Department of Foreign Affairs (FAC), Office of Protocol.

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**Note:** FAC 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.

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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), CEC 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 FAC 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 HRSDC confirmation may be issued, pursuant to R205, CEC C20. The foreign mission is noted as the employer.

#### **5. FAMILY MEMBERS OF FOREIGN REPRESENTATIVES IN CANADA**

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(c) if the foreign national is a family member of a foreign representative in Canada who is accredited with diplomatic status by the Department of Foreign Affairs and that Department 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 FAC (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**

FAC will only issue a letter of no-objection to persons who are accredited. Should a person not be accredited, FAC 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 Department of Foreign Affairs (FAC)**

FAC 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.

FAC 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 the Office of 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 FAC. (This permission 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

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authority to work in Canada). Such a request should be facilitated. The work permit may be issued pursuant to R205(b), CEC 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 FAC, who will issue a letter of no objection indicating this. The work permit may be issued pursuant to R205(b), CEC C20.

### **Procedures for issuance of a work permit (when requested or required):**

- Persons must present a copy of the no-objection note issued by FAC (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 FAC, Office of Protocol, (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 HRSDC confirmation R205(b), CEC 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".

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**Note:** If a foreign representative's family member works without a no-objection letter from the FAC, they cannot be reported under A44. Such infractions should be brought to the attention of the Office of Protocol, Diplomatic Corps Services by facsimile at (613) 943- 1075.

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## **HOUSEHOLD DOMESTIC WORKER EMPLOYMENT AGREEMENT (HDWEA)**

### **CIRCULAR NOTE NO. 0579**

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.

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This Note supersedes all previous Circular Notes<sup>1</sup> 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 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.**

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<sup>1</sup> 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.

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 Citizenship and Immigration Canada, 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.

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.

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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: \_\_\_\_\_

-----

### **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**

1. 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**

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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: \$ _____<br>Paid weekly _____ monthly _____.<br>Wages will be paid by:<br>cheque _____ cash _____.<br>Wages will be paid in _____ currency. | Minimum wage is:<br>\$7.45 per hour<br>\$327.80 per week of<br>44 hours<br>\$1420.46 per month<br>(44 hour week)<br>The minimum wage<br>will be revised on<br>February 1, 2006, to<br>\$7.75 per hour | Minimum wage is:<br>\$6.70 per hour<br>\$268.00 per week of<br>40 hours<br>\$1163.33 per month<br>(40 hour week)<br>The minimum wage<br>will be revised on<br>May 1, 2005, to \$6.85<br>per hour |
| Overtime salary   | Canadian Employment Standards   |  |
|   | Ontario   | Quebec   |

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|  |   |   |
|--|---|---|
| Overtime will be paid at \$_____s_____ 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.<br><br>E.g.: \$11.17 per hour for an hourly wage of \$7.45. | 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.<br><br>E.g.: \$10.05 per hour for an hourly wage of \$6.70. |
| <b>Compensatory Time</b>   | <b>Ontario</b>  | <b>Quebec</b>   |
| 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.  |
| <b>Period of rest</b>  | <b>Canadian Employment Standards</b>  |   |
|  | <b>Ontario</b>  | <b>Quebec</b>   |
| One period of rest for every _____ consecutive hours should be given each week.<br><br>This period cannot be divided into shorter periods. | The employee is entitled to a minimum of:<br><br>a rest period of 24 consecutive hours per week,<br><br><u>or</u><br><br>a rest period of 48 consecutive hours every two weeks.       | The employee is entitled to a minimum of:<br><br>a rest period of 32 consecutive hours.   |
| <b>Free time</b>   | <b>Ontario</b>  | <b>Québec</b>   |
| 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   |
| <b>Hours of work</b>   | <b>Canadian Employment Standards</b>  |   |
|  | <b>Ontario</b>  | <b>Quebec</b>   |



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|   |  |  |  |
|---|--|--|--|
| <p>The work day begins at _____ and ends at _____.<br/>This includes _____ hours of free time per day<br/>(meals and breaks)</p> <p>Overtime wages shall be paid beyond the regular<br/>hours of work.</p>  |  |  |  |
| <b>Vacation time</b>  |  | <b>Ontario</b>   | <b>Quebec</b>  |
| <p>Vacation time is given at a time agreeable to the<br/>employer, but must be given within the next 10<br/>months.</p> <p>_____ weeks of paid vacation per year will be given.</p> <p>_____ sick days per month will be given.</p>   |  | At least two weeks<br>after a 12-month<br>period of<br>employment.   | At least two weeks after<br>a 12-month period of<br>employment.  |
| <b>Vacation pay</b>   |  | <b>Canadian Employment Standards</b>   |  |
|   |  | <b>Ontario</b>   | <b>Quebec</b>  |
|   |  | Should be four percent<br>(4%) of the total wages<br>earned during the twelve<br>months of employment<br>(which includes overtime<br>and bonus).   | Should be four percent<br>(4%) of the total wages<br>earned during the twelve<br>months of employment<br>(which includes overtime<br>and bonus).   |
| <b>Holidays</b>   |  | <b>Ontario</b>   | <b>Quebec</b>  |
| <p>A minimum of 8 days per year.</p> <p>If an employee is required to work on a public<br/>holiday, the employer may substitute another<br/>working day with pay. This substitute day off<br/>must be granted not later than the employee's<br/>next annual vacation. If a substitute<br/>arrangement is not made, the employee must<br/>be paid at least time and one-half the regular<br/>rate for the hours worked, in addition to the<br/>regular day's pay for that holiday.</p> |  | If a public holiday falls on<br>an employee's day off or<br>during an employee's<br>annual vacation, that<br>employee is entitled to<br>another working day off<br>with pay in place of the<br>missed holiday. Or, if the<br>employee agrees,<br>compensation may take<br>the form of an extra day's<br>pay. | If a public holiday falls<br>on an employee's day off<br>or during an employee's<br>annual vacation, that<br>employee is entitled to<br>another working day off<br>with pay in place of the<br>missed holiday. Or, if the<br>employee agrees,<br>compensation may take<br>the form of an extra<br>day's pay. |
| <b>Weekly deductions and accommodation</b>  |  | <b>Canadian Employment Standards</b>   |  |
|   |  | <b>Ontario</b>   | <b>Quebec</b>  |

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|  |   |   |
|--|---|---|
| <p>To qualify as a private servant the employee must reside in the employer's household.</p> <p>Room and board: an amount of \$_____ will be deducted monthly from gross salary for the cost of room and board.</p> <p><i>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.</i></p> <p>Accommodation provided will be _____ private _____ shared.</p> <p>Bathroom facilities provided will be _____ private _____ shared.</p> <p>Personal cooking and laundry facilities will be _____ private _____ shared.</p> | <p>The maximum weekly deduction for a private room and meals is \$85.25.</p> <p>The maximum weekly deduction for a non-private room and meals is \$53.55.</p> | <p>The maximum weekly deduction is \$40.00 per week for room and board.</p> |
| <b>Health insurance</b>  |   |   |
| <p>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.</p>   |   |   |
| <b>Transportation</b>  |   |   |
| <p>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.</p>  |   |   |

### 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:

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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 - [www.gov.on.ca/LAB](http://www.gov.on.ca/LAB)

QUEBEC - <http://www.cnt.gouv.qc.ca/en/index.asp>

ALBERTA - <http://www3.gov.ab.ca/hre/employmentstandards/>

BRITISH COLUMBIA - [www.labour.gov.bc.ca/esb/](http://www.labour.gov.bc.ca/esb/)

For other provinces and/or information, please contact the Office of Protocol at (613) 992-0889.

## Appendix D General Agreement on Trade in Services (GATS)

Like the NAFTA, the temporary entry of business persons under GATS can be facilitated without the need for HRSDC confirmation. 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 visitors and intra-company transferees entering under GATS qualify under Canada's generally applicable immigration rules: R186(a) and R205(a) CEC C12. However, there are unique rules for the entry of professionals under GATS. These professionals may be granted work permits pursuant to R204, CEC 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

| <b>GROUP 1</b>             |   |  |
|----------------------------|---|--|
| <b>Occupation</b>          | <b>Minimum educational requirement<br/>alternative credentials</b>  | <b>Other requirements</b>  |
| 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   |
| <b>GROUP 2</b>             |   |  |
| Foreign Legal Consultants  | Baccalaureate degree in law   | Provincial licence   |
| Urban Planners             | Baccalaureate degree in urban planning  | Provincial licence   |

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|                             |   |  |
|-----------------------------|---|--|
| Senior Computer Specialists | Graduate degree**** in computer 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](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. Possess 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. Possess qualifications that have been recognized, where appropriate, by the professional association in Canada.
6. Comply with existing immigration requirements for temporary entry, including temporary resident visa (TRV) requirements.

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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](http://www.wto.org)) or permanent resident status in Australia and New Zealand;

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- 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 HRSDC Confirmation Exemption Code (CEC) T33.

Applications for work permits may be made at a visa office or at a port of entry (for applicants who do not require a temporary resident visa).

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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.



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### Appendix E International student and young worker employment

#### 1. ALPHABETICAL LIST BY COUNTRY

##### CONFIRMATION EXEMPTION CODE CEC C21

| Country        | Name of program   | Eligibility   | Type of work permit  | Maximum validity period |
|----------------|---|---|--|-------------------------|
| Argentina      | Student Work Abroad Program (SWAP)  | 18-30 years of age  | open   | 12 months               |
| Armenia        | Mouvement Québécois des Chantiers/ Republican Headquarters of Student Brigades-Voluntary Service of Armenia (HUJ) | 18-30 years of age  | open   | 6 months                |
| Australia      | Student Work Abroad Program (SWAP)  | 18-30 years of age  | open   | 12 months               |
| Australia      | Working Holiday Program (WHP)   | 18-30 years of age  | open   | 12 months               |
| 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)   | 6 months                |
| Austria        | SWAP/Supertramp   | 18-30 years of age, post-sec. students  | open   | 12 months               |
| Belarus        | Mouvement Québécois des Chantiers/ Belarussian Association of International Youth Work (ATM)                      | 18-30 years of age  | open   | 6 months                |
| Belgium        | Agence Québec/Wallonie-Bruxelles  | 18-30 years of age  | employer specific  | 4-12 months             |
| Belgium        | Mouvement Québécois des Chantiers/ Compagnons Bâtisseurs/Agence Québec/Wallonie Bruxelles                         | 18-30 years of age  | open   | 12 months               |
| Belgium        | Tourisme Jeunesse/Youth Hostels Belgium   | 18-30 years of age  | open   | 12 months               |
| Belgium        | Working Holiday Program (WHP)   | 18-30 years of age  | open   | 12 months               |
| Brazil         | Student Work Abroad Program (SWAP)  | 18-30 years of age  | open   | 6 months                |
| Chile          | Student Work Abroad Program (SWAP)  | 18-30 years of age  | open   | 6 months                |
| Costa Rica     | Student Work Abroad Program (SWAP)  | 18-30 years of age  | open   | 6 months                |
| Czech Republic | Mouvement Québécois des Chantiers/Centre for International Youth Exchange and Tourism                             | 18-30 years of age  | open   | 6 months                |
| Czech Republic | Student Work Abroad Program (SWAP)  | 18-30 years of age  | open   | 6 months                |
| Denmark        | Working Holiday Program   | 18-35 years of age  | open   | 12 months               |
| Finland        | Canada-Finland Career Development Program   | 18-30 & college or uni grad w/ 2 years  | employer specific career related   | 18 months               |
| Finland        | Student Work Abroad Program (SWAP)  | 18-30 & post-sec student  | open   | 6 months                |
| France         | Canada-France Agreement: Professional Development   | 18-35 years of age  | employer specific  | 12 months (optional 6-  |

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|                       |  |  |   |  |
|-----------------------|--|--|---|--|
|                       |  |  |   | month renewal)   |
| France                | Canada-France Agreement: School Holiday Jobs for Students  | 18-35 years of age   | employer specific   | 3 months, summer period  |
| France                | Canada-France Agreement: Working Holiday Program (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                | Mouvement Québécois des Chantiers/ Compagnons Bâtisseurs   | 16-30 years of age   | employer specific   | 3-12 weeks   |
| France                | Mouvement Québécois des Chantiers/ Concordia   | 16-30 years of age   | employer specific   | 3-12 weeks   |
| France                | Mouvement Québécois des Chantiers/Rempart  | 16-30 years of age   | employer specific   | 3-12 weeks   |
| Germany               | Canada-Germany Young Worker Exchange Program   | 18-30 years of age   | employer specific in field of study   | 18 months  |
| Germany               | Canadian Association of University Teachers of German Work Student Program (CAUTG)   | 18-30 years of age   |   | 2-3 months during the summer months                              |
| Germany               | German-Canadian Society Program (DKG)  | 18-30 years of age   | employer specific and open  | 3 months from mid- July to end of October                        |
| Germany               | Mouvement Québécois des Chantiers/ Vereinigung Junger Freiwilliger (Union of Young Volunteers) (VJF)                         | 18-30 years of age   | open  | 12 months  |
| Germany               | Student Work Abroad Program (SWAP)   | 18-30 years of age   | open  | 12 months  |
| Germany               | Tourisme Jeunesse/Deutsches Jugenderbergswerk Hauptverband   | 18 - 30 years of age   | member of Youth Hostel  | 2 to 6 months  |
| Germany               | Working Holiday Program (WHP)  | 18-30 years of age   | employer specific   | 6 months   |
| India                 | Student Work Abroad Program (SWAP)   | 18-30 years of age   | open  | 6 months   |
| Ireland               | International Fund for Ireland   | 16-28 years of age   | employer specific/open  | varies, usually 8-12 weeks                                       |
| Ireland               | Student Work Abroad Program (SWAP)   | 18-30 years of age   | open  | 12 months  |
| Ireland               | Working Holiday Program (WHP)  | 18-30 years of age post- secondary student in Ireland  | open  | 12 months  |
| Japan                 | Working Holiday Program (WHP)  | 18-30 years of age   | open  | 12 months  |
| Lithuania             | Mouvement Québécois des Chantiers/Centre of Student Activities (Litmina)   | 18-30 years of age   | open  | 6 months   |
| Luxembourg            | Young Farmers Québec   | 18-30 years of age   | employer specific   | 12 months  |
| Korea                 | Working Holiday Program (WHP)  | 18-30 years of age   | open  | 12 months  |
| Multilateral Exchange | Canadian Crossroad International/Carrefour Canadien International Programme Africains au Québec (CCI)/(PAQ)                  | 18-30 years of age [NOTE: where participants are over 30, process under C50 if applicable, or C20 if not.] | employer specific   | 4-5 months either from May to September or September to December |
| Multilateral Exchange | International Agricultural Exchange (IAEA) 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 | International Association for Exchange of Students of Economics and Commerce (AIESEC)  | 18-30 years of age   | employer specific   | 18 months  |

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|                       |   |                    |                   |                |
|-----------------------|---|--------------------|-------------------|----------------|
| Multilateral Exchange | International Association for Exchange of Student for Technical Experience (IAESTE)         | 18-30 years of age | employer specific | 12 months      |
| Multilateral Exchange | International Cooperative Education (ICE) - ** 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)   |                    |                   |                |
|                       | Austria (Salzburg U of Applied Sciences / Simon Fraser U)                                   |                    |                   |                |
|                       | France (ESSCA / Sir Sanford Fleming)  |                    |                   |                |
|                       | France (U of Compiègne / U of Waterloo)   |                    |                   |                |
|                       | France (U de technologie Compiègne / McMaster U)  |                    |                   |                |
|                       | Germany (Berufsakademie Heidenheim & U of Mannheim / U of Victoria)                         |                    |                   |                |
|                       | Germany (Canada-Germany Georgian College / U of Victoria)                                   |                    |                   |                |
|                       | Germany (Karlsruhe U / Queen's U)   |                    |                   |                |
|                       | Japan (U of Fukushima / U of Victoria)  |                    |                   |                |
|                       | Mexico (U del Valle de Mexico / Sir Sanford Fleming)  |                    |                   |                |
|                       | New Zealand (Victoria U at Wellington & U of Waikato / U of Victoria)                       |                    |                   |                |
|                       | 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 | Office Quebec-Americas pour la Jeunesse (OQAJ) (N and S America)                            | 18-30 years of age | open              | 12 months      |
| Multilateral Exchange | International Visitor 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 | Student Work Abroad Program (SWAP) (see separate attachment)                                | 18-30 years of age | open              | 6 or 12 months |
| Netherlands           | Student Work Abroad Program (SWAP)  | 18-30 years of age | open              | 12 months      |
| Netherlands           | Working Holiday Program (WHP)   | 18-30 years of age | open              | 12 months      |
| New Zealand           | Student Work Abroad Program (SWAP)  | 18-30 years of age | open              | 12 months      |
| New Zealand           | Working Holiday Program (WHP)   | 18-30 years of age | open              | 12 months      |
| Peru                  | Student Work Abroad Program (SWAP)  | 18-30 years of age | open              | 6 months       |
| Poland                | Mouvement Québécois des Chantiers/Youth Voluntary Service                                   | 18-30 years of age | open              | 6 months       |
| Poland                | Student Work Abroad Program (SWAP)  | 18-30 years of age | open              | 6 months       |
| Romania               | Student Work Abroad Program   | 18-30 years of age | open              | 6 months       |

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|                 |  |   |                                     |                                |
|-----------------|--|---|-------------------------------------|--------------------------------|
|                 | (SWAP)   |   |                                     |                                |
| Russia          | Mouvement Québécois des Chantiers/Youth Voluntary Service                                  | 18-30 years of age  | open                                | 12 months                      |
| Slovak Republic | Mouvement Québécois des Chantiers/NEX - Slovakia (Assn. for Int. Youth Exchange & Tourism) | 18-30 years of age  | open                                | 6 months                       |
| Slovak Republic | Student Work Abroad Program (SWAP)   | 18-30 years of age  | open                                | 6 months                       |
| South Africa    | Work Abroad Program (SWAP)   | 18-30 years of age  | open                                | 12 months;                     |
| Spain           | Mouvement Québécois des Chantiers/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 post-secondary students                                | employer specific                   | 12 months                      |
| Switzerland     | Canada-Switzerland Young Trainee Exchange Program  | 18-35 years of age  | employer specific                   | 4 months from May to September |
| Switzerland     | Canada-Switzerland Young Workers Exchange Program  | 18-35 years of age  | employer specific in field of study | 18 months                      |
| United Kingdom  | Mouvement Québécois des Chantiers/United Nations Association Wales (UNA Wales, IVS)        | 18-30 years of age  | open                                | 12 months                      |
| United Kingdom  | The Gap Activity Projects Limited  | 18-30 years of age full-time or part-time student & graduates of the year | employer specific                   | 12 months                      |
| United Kingdom  | Student Work Abroad Program (SWAP-BUNAC)   | 18-30 (students) / 18-35 years of age                                     | open                                | 12 months                      |
| United States   | Mouvement Québécois des Chantiers/Council of International Educational Exchange (CIEE)     | 18-30 years of age  | open                                | 12 months                      |
| United States   | Student Work Abroad Program (SWAP)   | 18-30 years of age  | open                                | 6 months                       |
|                 |  |   |                                     |                                |

**Note:** When issuing an open work permit, if the applicant has not passed an immigration medical, an occupation restriction must be specified. Once the applicant has completed the medical requirements, the condition can be removed.

## 2. ALPHABETICAL LIST BY PROGRAM

| Name of program  | Country | Participating organization | Age                                       | Type of work permit   | Maximum validity period |
|--|---------|----------------------------|---|---|-------------------------|
| Agence Québec Wallonie Bruxelles                         | Belgium |                            | 18-30                                     | employer specific   | 4 to 12 months          |
| Canada Austria Intra- & Partner-Company Training Program | Austria |                            | no limit                                  | employer specific: permanently employed by an Austrian company w/Canadian partner, subsidiary or parent company | 12 months               |
| Canada Austria Young Workers Exchange Program            | Austria |                            | 18-30, up to 35 on exceptional basis      | employer specific-in fields of agriculture, forestry or tourism   | 6 months                |
| Canada Finland Career Development Program                | Finland |                            | 18-30 college or uni. grad. (within 2 yr) | employer specific career related  | 18 months               |
| Canada-France Agreement (2003)                           | France  |                            |   |   |                         |
| Professional   | France  |                            | 18-35                                     | employer specific   | 12 months (optional)    |

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|---|-----------------------|---|---|--|---|
| Development   |                       |   |   |  | 6 month renewal)                            |
| School Holiday Jobs for Students  | France                |   | 18-35   | employer specific  | 3 months during the summer                  |
| Work Placements   | France                |   | 18-35   | employer specific field directly related to current studies or training program      | 12 months                                   |
| Working-Holiday Program   | France                |   | 18-35   | open   | 12 months                                   |
| Canada Germany Young Worker Exchange Program  | Germany               |   | 18-30   | employer specific in field of study  | 18 months                                   |
| Canada Switzerland Young Trainee Exchange Program                                   | Switzerland           |   | 18-35   | employer specific in field of study  | 4 months from May to September              |
| Canada Switzerland Young Workers Exchange Program                                   | Switzerland           |   | 18-35   | employer specific in field of study  | 18 months                                   |
| Canadian Association of University Teachers of German Work Student Program          | Germany               |   | 18-30   |  | 2 to 3 months during the summer             |
| Canadian Crossroad International (CCI/PAQ)  | Multilateral exchange | Programme Africain au Québec Carrefour Canadien International | 18-30 [NOTE: where participants are over 30, process under C50 if applicable, or C20 if not.] | employer specific  | 4 to 5 months, May to Sept. or Sept. to May |
| German- Canadian Society Program (DKG)  | Germany               |   | 18-30   | employer specific open   | 3 months, mid- July to end October          |
| International Agricultural Exchange (IAEA)  | Multilateral exchange | Canadian Host Family Association                              | 18-30   | employer specified as IAEA; may work for any host family approved by the CHFA/ IAEA. | 12 months                                   |
| International Association for Exchange of Student of Economics & Commerce           | Multilateral exchange |   | 18-30   | employer specific  | 18 months                                   |
| International Association for Exchange of Student for Technical Experience (IAESTE) | Multilateral exchange |   | 18-30   | employer specific  | 12 months                                   |
| International Cooperative Education - *   |                       | * participating institutions subject to change                | 18-30   | employer specific  | 12 months                                   |
| Mcmaster U  | France                | U de technologie Compiègne                                    |   |  |   |
| Queen's U   | Germany               | Karlsruhe U   |   |  |   |
| Ryerson Polytechnic U   | Australia             | U of South Australia  |   |  |   |
| Simon Fraser U  | Austria               | Salzburg U of Applied Sciences                                |   |  |   |
| Sir Sanford Flemming  | France                | ESSCA   |   |  |   |
|   | Mexico                | U del Valle de  |   |  |   |

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|  |                       |   |       |                          |                            |
|--|-----------------------|---|-------|--------------------------|----------------------------|
|  |                       | Mexico  |       |                          |                            |
| U of Victoria  | Australia             | Ballarta U College & Swinburne U of Technology                                |       |                          |                            |
|  | Austria               | Johannes Kepler U   |       |                          |                            |
|  | Germany               | Berufsakademie Heidenheim & U of Mannheim                                     |       |                          |                            |
|  | Germany               | Canada-Germany Georgian College   |       |                          |                            |
|  | Japan                 | U of Fukushima  |       |                          |                            |
|  | New Zealand           | Victoria U at Wellington & U of Waikato                                       |       |                          |                            |
|  | Singapore             | Nanyang Technological U   |       |                          |                            |
|  | Taiwan                | National Sun-Yat-Sen U  |       |                          |                            |
|  | United Kingdom        | U of Brunel, U of East Anglia & U of Surrey                                   |       |                          |                            |
| U of Waterloo  | Australia             | U of Technology, Sydney Exchange  |       |                          |                            |
|  | France                | U of Compiègne  |       |                          |                            |
| International Fund for Ireland   | Ireland               |   | 16-28 | employer specific / open | varies, usually 8-12 weeks |
| International Rural Exchange (IRE)   | Multilateral exchange |   | 18-30 | employer specific        | 6-12 months                |
| International Visitor Exchange Program of the Mennonite Central Committee of Canada (IVEP) | Multilateral exchange | Mennonite Central Committee, Winnipeg, Manitoba                               | 18-30 | employer specific        | 12 months                  |
| Mouvement Québécois des Chantiers  | Armenia               | Republic Headquarters of Student Brigades; Voluntary Service of Armenia (HUU) | 18-30 | open                     | 6 months                   |
|  | Belarus               | Belarussian Association of International Youth (ATM)                          | 18-30 | open                     | 6 months                   |
|  | Belgium               | Compagnons Bâtisseurs; Agence Québec; Wallonie Bruxelles;                     | 18-30 | open                     | 12 months                  |
|  | Czech Republic        | Centre for International Youth Exchange and Tourism;                          | 18-30 | open                     | 6 months                   |
|  | France                | Compagnons Bâtisseurs; Concordia; Rempart;                                    | 16-30 | employer specific        | 3-12 weeks                 |
|  | Germany               | Vereinigung Junger Freiwilliger (Union Young Volunteers VJF)                  | 18-30 | open                     | 12 months                  |
|  | Lithuania             | Centre of Student Activities  | 18-30 | open                     | 6 months                   |
|  | Poland                | Youth Voluntary Service   | 18-30 | open                     | 6 months                   |
|  | Russia                | Youth Voluntary Service   | 18-30 | open                     | 12 months                  |
|  | Slovak Republic       | NEX - Slovakia (Association for Int. Youth Exchange & Tourism)                | 18-30 | open                     | 6 months                   |

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|   |                 |  |                                |                                 |            |
|---|-----------------|--|--------------------------------|---------------------------------|------------|
|   | Spain           | Instituto Catalan de Servicios a la Juventud   | 18-30                          | open                            | 12 months  |
|   | United Kingdom  | UN Association Wales (IVS)   | 18-30                          | open                            | 12 months  |
|   | United States   | Council of International Educational Exchange (CIEE)   | 18-30                          | open                            | 12 months  |
| Office Quebec-Ameriques pour la Jeunesse (OQAJ)                 | N and S America |  | 18-30                          | open                            | 12 months  |
| Student Work Program Abroad (SWAP)<br>(See separate attachment) |                 |  |                                |                                 |            |
| The Gap Activity Projects Limited                               | U.K.            | Examples of participating Canadian schools include Ashbury College, Upper Canada College, St. John's College | 18-30 post-secondary student   | employer specific               | 12 months  |
| Tourisme Jeunesse   | Belgium         | Youth Hostels Belgium  | 18-30                          | open                            | 12 months  |
|   | Germany         | Deutsches Jugenderbergswerk Hauptverband   | 18-30 & HI member              | employer specific: in HI hostel | 2-6 months |
| University of Alberta   | Sweden          | Swedish University of Agricultural Sciences; University of Helsinki  | 18-30, post-secondary students | employer specific               | 12 months  |
| Working Holiday Program (WHP)<br>(See separate attachment)      |                 |  |                                |                                 |            |
| Young Farmers Québec  | Luxembourg      |  | 18-30                          | employer specific               | 12 months  |

**Note:** When issuing an open work permit, if the applicant has not passed an immigration medical, an occupation restriction must be specified. Once the applicant has completed the medical requirements, the condition can be removed.

### STUDENT WORK PROGRAM ABROAD (SWAP)

| Country                 | Age                           | Type of work permit                 | Maximum validity period |
|-------------------------|-------------------------------|-------------------------------------|-------------------------|
| Argentina               | 18-30                         | open                                | 12 months               |
| Australia               | 18-30                         | open                                | 12 months               |
| Austria                 | 18-30 post-secondary student  | open                                | 12 months               |
| Brazil                  | 18-30                         | open                                | 6 months                |
| Chile                   | 18-30                         | open                                | 6 months                |
| Costa Rica              | 18-30                         | open                                | 6 months                |
| Czech Republic          | 18-30                         | open                                | 6 months                |
| Finland                 | 18-30, post-secondary student | open                                | 6 months                |
| Trainees apprenticeship |                               | employer specific to field of study | 9 months                |
| Ghana                   | 18-30                         | open                                | 6 months                |
| Germany                 | 18-30                         | open                                | 12 months               |
| India                   | 18-30                         | open                                | 6 months                |

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|                          |   |      |           |
|--------------------------|---|------|-----------|
| Ireland                  | 18-30, post- secondary student in Ireland | open | 12 months |
| Ireland                  | 18-30                                     | open | 12 months |
| Mexico                   | 18-30                                     | open | 12 months |
| Netherlands              | 18-30                                     | open | 12 months |
| New Zealand              | 18-30                                     | open | 12 months |
| Peru                     | 18-30                                     | open | 6 months  |
| Poland                   | 18-30                                     | open | 6 months  |
| Slovak Republic          | 18-30                                     | open | 6 months  |
| South Africa             | 18-30                                     | open | 12 months |
| Thailand                 | 18-30                                     | open | 6 months  |
| United Kingdom (Student) | 18-30                                     | open | 12 months |
| United Kingdom           | 18-35                                     | open | 12 months |
| Ukraine                  | 18-30                                     | open | 6 months  |
| United States            | 18-30                                     | open | 6 months  |

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**Note:** SWAP has been granted quotas to expand into new countries. Therefore this list may not be exhaustive.

**Note:** When issuing an open work permit, if the applicant has not passed an immigration medical, an occupation restriction must be specified. Once the applicant has completed the medical requirements, the condition can be removed.

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### WORKING HOLIDAY PROGRAM (WHP)

| Country        | Age                                    | Type of work permit | Maximum validity period |
|----------------|--|---------------------|-------------------------|
| Australia      | 18-30                                  | open                | 12 months               |
| Belguim        | 18-30                                  | open                | 12 months               |
| Denmark        | 18-35                                  | open                | 12 months               |
| France         | 18-35                                  | open                | 12 months               |
| Germany        | 18-30                                  | open                | 12 months               |
| Ireland        | 18-30, post-secondary students         | open                | 12 months               |
| Japan          | 18-30                                  | open                | 12 months               |
| Korea          | 18-30                                  | open                | 12 months               |
| New Zealand    | 18-30                                  | open                | 12 months               |
| Netherlands    | 18-30                                  | open                | 12 months               |
| Sweden         | 18-30, post-secondary students         | open                | 12 months               |
| United Kingdom | 18-30, post-secondary students in U.K. | employer specific   | 6 - 12 months           |

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**Note:** When issuing an open work permit, if the applicant has not passed an immigration medical, an occupation restriction must be specified. Once the applicant has completed the medical requirements, the condition can be removed.

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### 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, CEC T10.

##### **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 temporary resident visa (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 HRSDC-confirmation exempt under R205(b) - CEC 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.

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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 confirmation is required.

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**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.

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### **COUNTRIES DESIGNATED FOR THE PURPOSE OF THE *VISITING FORCES ACT* (as of May 2005)**

Albania, Republic of  
Antigua and Barbuda  
Australia, Commonwealth of  
Austria, Republic of  
Azerbaijani, Republic  
Bangladesh, People's Republic of  
Barbados  
Belgium, Kingdom of  
Belize  
Benin, Republic of  
Botswana, Republic of  
Brunei  
Bulgaria, Republic of  
Cameroon  
Czech Republic  
Denmark, Kingdom of  
El Salvador, Republic of  
Estonia, Republic of  
Ethiopia  
Finland, Republic of  
France  
Georgia, Republic of  
Germany, Federal Republic of  
Ghana, Republic of  
Greece, Kingdom of  
Guyana

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Hungary, Republic of  
Iceland  
Italy  
Ivory Coast, Republic of the  
Jamaica  
Japan  
Kazakhstan, Republic of  
Kenya, Republic of  
Korea, Republic of  
Kuwait, State of  
Latvia, Republic of  
Lithuania, Republic of  
Luxembourg, Grand Duchy of  
Macedonia, former Yugoslav Republic of  
Malawi  
Malaysia  
Moldova, Republic of  
Nepal, Kingdom of  
Netherlands, Kingdom of the  
New Zealand, Dominion of  
Nicaragua, Republic of  
Niger  
Nigeria  
Norway, Kingdom of  
Oman, Sultanate of  
Poland, Republic of  
Portugal  
Romania  
Sierra Leone, Republic of  
Singapore, Republic of  
Slovak Republic  
Slovenia, Republic of  
Spain, Kingdom of  
Sudan, Democratic Republic of the  
Swaziland  
Sweden, Kingdom of  
Tanzania, United Republic of

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Thailand, Kingdom of  
Trinidad and Tobago  
Turkey, Republic of  
Uganda, Republic of  
Ukraine  
United Arab Emirates  
United Kingdom of Great Britain and Northern Ireland  
United States of America  
Uzbekistan, Republic of  
Venezuela, Republic of  
Zambia, Republic of  
Zimbabwe, Republic of

### **MTAP COUNTRIES NOT DESIGNATED UNDER THE VFA (as of May 2005)**

Argentina  
Bosnia-Herzegovina  
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)

## **FW 1 Foreign Worker Manual**

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.

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**Note:** The text of the actual agreement is found at <http://www.dfait-maeci.gc.ca/nafta-alena/agree-e.asp>. Chapter 16 is found in part V.

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### 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.

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### 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 a labour market opinion (confirmation) 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 port of entry.

### 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 HRSDC confirmation 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;



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- 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 HRSDC confirmation but require a work permit (R204, CEC 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 confirmation process but require a work permit (R204, CEC 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 confirmation process but require a work permit (R204, CECs 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;

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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;

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**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.*

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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 Human Resource Development Centre labour market opinion or confirmation 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 Articles 1603.3(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;

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- ◆ 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

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### 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?

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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;
- 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.)

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### 2.3 Where can a business visitor apply for entry?

Business visitors must apply at a port of entry 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.

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### 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.

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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.

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### 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.

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### 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 (confirmation by Human Resources and Skills Development Canada). As part of the confirmation process, HRCs 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;

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- 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**

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### 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.

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**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.*

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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.

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**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.*

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### 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.

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**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.*

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- 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

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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.

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**Note:** *This provision covers American and Mexican customs brokers travelling to Canada to consult and not to provide brokerage services.*

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### 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.

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**Note:** *"Business associates" refers to colleagues or clients.*

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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.

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**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 confirmation process.*

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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;

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- 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.

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**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.

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- 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.

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### 3.3 Where can a professional apply for a work permit ?

Facilitated entry under the NAFTA allows a Professional to apply at a port of entry. 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

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- 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:

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- 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 be issued a work permit pursuant to R204, CEC T23.

### 3.7 How long can a work permit be issued and can it be extended?

On initial entry, the professional should be given status for a maximum of one year.



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Extensions can also be issued for a duration of up to one year providing the individual continues to comply with the requirements for professionals.

There is no time “cap” on extensions but 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 available at: <http://www.dfait-maeci.gc.ca/nafta-alena/agree-e.asp>

**Note:** For the purpose of the following table, the word “Profession” is defined as:

**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  |
|---|---|
| <b>General</b>  |   |
| 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.   |
|   | <b>Note:</b> “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.<br><br><b>Note:</b> “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   |
| <b>Note:</b> For the purposes of this provision, a disaster shall be an event so declared by the Insurance Bureau of Canada or sub-committee thereof through activating |   |

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| the <i>Insurance Emergency Response Plan</i> .  |  |
| 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   |
| <b>Note:</b> 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)   |
| <b>Note:</b> A librarian must have either:<br>1. a Master of Library Science degree; or<br>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 |
| <b>Notes:</b><br><br>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.<br><br>2. A management consultant may provide the following range of services: <ul style="list-style-type: none"> <li>• conduct a comprehensive examination of the client's business to isolate and define problems;</li> <li>• prepare a presentation and report all findings to the client;</li> <li>• work with the client to design and implement in-depth working solutions.</li> </ul> |  |

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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.

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| Mathematician<br>(including Statistician and Actuary)                    | Baccalaureate or Licenciatura Degree<br>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 practical 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 or 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

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| 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  |
| <b>Medical/Allied Professional</b>   |   |
| 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)<br>(See note below for further details.)   | Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience |
| <b>Note:</b> 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   |
| <b>Note:</b> 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  |
| <b>Note:</b> 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  |
| <b>Scientist</b>   |   |
| Agriculturist (including Agronomist)   | Baccalaureate or Licenciatura Degree  |
| Animal Breeder   | Baccalaureate or Licenciatura Degree  |

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| Animal Scientist   | Baccalaureate or Licenciatura Degree |
| Apiculturist   | Baccalaureate or Licenciatura Degree |
| Astronomer   | Baccalaureate or Licenciatura Degree |
| Biochemist   | Baccalaureate or Licenciatura Degree |
| Biologist<br>(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<br>Oceanographer in Mexico and<br>the United States) | Baccalaureate or Licenciatura Degree |
| Horticulturist   | Baccalaureate or Licenciatura Degree |
| Meteorologist  | Baccalaureate or Licenciatura Degree |
| Pharmacologist   | Baccalaureate or Licenciatura Degree |
| Physicist (including<br>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 |
| <b>Teacher</b>   |                                      |
| 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, 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 port of entry. 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 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.

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**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.

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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), CEC 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

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- 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

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- 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, CEC T34.

### 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.

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**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.

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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, and to spend at least 25% of the duration of their work permit in Canada. If an applicant expects to spend less time than that, officers should examine whether they might better be classified as a business



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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 port of entry (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 port of entry 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.

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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)

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**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.

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In parent-subsidary 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.

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### 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.

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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; CEC 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:

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- 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 port of entry (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 port of entry 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.

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**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.

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In parent-subsidary 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.

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**Note:** This criterion does not apply to an employee of an investor.

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“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.

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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

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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.

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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:



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### 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, CEC 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 an 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 port of entry a letter from the employer describing the temporary appointment.

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**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.

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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 port of entry, 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 HRSDC confirmation 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 HRSDC confirmation 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." HRCC confirmation (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 port of entry 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.

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**Note:** There is a \$150.00 processing fee for a work permit.

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### 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 port of entry 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. port of entry 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.

## ANNEX I

### Confirmation Exempt Codes (TEACHERS)

Code C22

## **FW 1 Foreign Worker Manual**

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).

### **ANNEX 2**

#### **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.

#### **Exhibitors and selling at conventions and meetings**

Exhibitors are persons displaying or demonstrating goods (or services) at an event. Persons who only display or demonstrate goods at an event do not require work permits.

Sales **not to** the general public (no work permit required):

Exhibitors displaying foreign-manufactured goods may sell those goods at events that are aimed at wholesalers, retailers and institutions (that is, not the general public). No work permit is required in this case, as long as the goods or services are not delivered at the time of sale.

Sales **to** the general public (work permit required):

Exhibitors engaged in direct sales to the public, where the goods or services are delivered at the time of sale, are considered to be entering the labour market and a work permit is required. The work permits are confirmation-exempt pursuant to R205(a), C10 (significant benefit) where the workers are exhibiting at events such as association meetings, conventions and congresses, corporate meetings, incentive meetings, trade shows, exhibitions and consumer shows. There are benefits deriving from their entry in that they hire Canadian services and purchase accommodations, etc.

Where the goods or services are not delivered or available at the time of sale (or during the exhibitor's business trip), R187 applies and no work permit is required.

#### **Sales to the general public**

Persons engaging in regular sales to the general public require a work permit issued on the basis of an HRSDC confirmation.

#### **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. They may enter to give training and motivation sessions, and assist recruits in making their first presentations and sales to Canadian consumers. They may

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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.