



Matrixvisa Inc.

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Immigration Law and International Recruitment

Newsletter: 3 April 2011

Immigration Law Changes on 1 April 2011

During the recent couple of months there were indications that job offers were made to foreign nationals that were not genuine. A large immigration law firm from Vancouver was implicated in providing offers that was less than earnest. Some foreign workers were injured in accidents (probably a very small fraction of the foreign worker population). Certain visa offices also indicated that work permit requests for some provincial nominees contained false information as well as misrepresentations.

As a result of all these occurrences, significant changes in immigration policy with regards to temporary foreign workers were implemented on 1 April 2011. Specific new regulations and rules were also implemented by Human Resources and Skills Development and Service Canada (HRSDC/SC).

Similar changes in both the immigration regulations and rules were also implemented at the Canadian Border Services Agency and Citizenship & Immigration Canada (CBSA/CIC).

These regulations were published in the Government Gazette in August 2010 but the rules were not published until Friday, 1 April 2011. The rules that were published on 1 April 2011 are important as it provides the industry with some idea of how the regulations will be implemented.

The Government Gazette from August 2010 can be seen here:

www.matrixvisa.com/pages/Rules&Regs/RegulationChangesAug2010.pdf

CBSA/CIC Regulations and Rules

A summary of the most important seven rule changes in terms of the CBSA/CIC are as follows:

1. CIC officers will specifically verify that work permits that are Labour Market Opinion exempt (such as intra company transferees, Provincial Nominees etc) are genuine by ensuring the following:
 - That the job offer was made by an employer who is **'actively engaged' in the business.**
For this factor the CBSA/CIC may request the following:
 - Job offer on the employer's letter head
 - Human Resources Plan
 - Provincial/municipal business license
 - Business registration or legal incorporation
 - Letter from a Union (or Union Contract)
 - Commercial rental/lease agreement; deed of property in case of new ownership
 - Company Organization Chart
 - PD7A (Statement of Account for Current Source Deductions)
 - T 4 Remittance Summary
 - T 2125 (Statement of Business Activities)
 - T 2032 (Statement of Professional Activities)
 - T2 – 100 (Balance sheet information)
 - T2 – 125 (Income Statement Information)
 - Employer's Property Assessments
 - Employer's Annual Report
 - Contracts with other companies
 - Advertisements in media, Rental of booths at shows such a previous mining convention
 - That the job offer is consistent with the **reasonable employment needs of the employer.**
For this factor the following can be requested by the CBSA/CIC:
 - Job Offer on letter head of the employer
 - Human Resources Plan (showing how the company plans to grow)
 - Company Organization Chart
 - Service Contract with other companies
 - New contracts of new business
 - Workers' compensation clearance letter – declares that the employer is registered with the appropriate workers' compensation board and has an account in good standing.

- That the job offer was made by an employer that can **reasonably fulfill the conditions of the job offer (i.e. can the employer afford the foreign national).**

For this factor the following can be requested by the CBSA/CIC:

- Human Resources Plan
- PD7A's
- T4 Remittances
- T2125 (Statement of Business Activities)
- T2032 (Statement of Professional Activities)
- T2 – 100 (Balance sheet information)
- T2 – 125 (Income Statement Information) (*T2 Schedule 100/125 provides insight into the solvency of a business by providing information on operating income and the overall financial position/retained earnings of the business*)
- Business registration or legal incorporation
- Letter from lawyer about the existence of the company
- Letter from CA, CMA or CGA.
- Future contracts that will demonstrate income.

- **That the employer or their authorized recruiter has shown past compliance with federal/provincial/territorial laws** that regulate employment **and** recruitment legislation in the province where the foreign national (FN) will be working.

These include (inter alia):

- Compliance with record keeping rules according to the provincial labour laws of different provinces
- Registration with and payment of premiums to Workplace Insurance and Safety Boards (WISB) of different provinces
- Payment of Employment Insurance premiums

2. CIC will check whether employers complied with conditions of previous work permits in terms of wages paid, duties fulfilled, provincial labour laws, provincial recruitment laws, etc. It is called a STS assessment or an assessment of Substantially-the-Same conditions of new work permits.
3. Employers that did not comply with conditions of previous work permits, will be blacklisted on the CIC website (names addresses and duration of the ban will be published) and be refused to be allowed to appoint foreign workers for a 2-year period.
4. Foreign nationals that has worked or studied without authorization will not be allowed to obtain renewals on their work permits for 2 years.

5. With a few exceptions, foreign workers would not be allowed to work in Canada for longer than 4 years at a time. Foreign workers would be required to obtain permanent residence or return to their country of origin.
6. Information will be shared between:
 - Provinces,
 - Canadian Border Services Agency (CBSA),
 - Human Resources Skills Development Canada/Service Canada (HRSDC/SC)
 - Citizenship and Immigration Canada (CIC)
7. A database of all employers that employs foreign workers will be built and will be accessible by officers from HRSDC/SC, CBSA and CIC.

The full version of regulations of CBSA/CIC can be seen here (4 pages):

www.matrixvisa.com/pages/Rules&Regs/CICLegislation1April2011.pdf

The full version of rules on how these regulations will be implemented can be seen here (45 pages):

www.matrixvisa.com/pages/Rules&Regs/OperationalBulletin275-C1April2011.pdf

HRSDC/SC Regulations and Rules

A summary of the most important changes - three rules in terms of the HRSDC/SC are as follows:

1. HRSDC/SC will determine whether the employer has complied with the terms and conditions of previous LMO's in terms of appointments, duties, wages and the place/address of work. This is called a Substantially-The-Same (or STS) assessment. The assessment will be made based on the following:
 - payroll records;
 - time sheets;
 - job descriptions;
 - copies of the employer-employee contract;
 - collective agreements;
 - TFW's work permit;

2. Employers that did not comply with the terms and conditions of previous LMO's could have the LMO requests refused and be banned from the Temporary Foreign Worker Program for two years. Their names will also be published on a public website indicating the name of the employer address and the period of the ban.
3. HRSDC/SC **must** therefore also:
 - assess the genuineness of all job offers in the same manner as the above test of genuineness that must be performed by the CBSA/CIC, and
 - assess 6 factors for a Labour Market Opinion (LMO).

The full version of regulations of HRSDC/SC can be seen here (8 pages):

www.matrixvisa.com/pages/Rules&Regs/HRSDC&SCLegislation1April2011.pdf

The version of the rules on how these regulations will be implemented by HRSDC/SC can be seen here (2 pages):

www.matrixvisa.com/pages/Rules&Regs/HRSDC-SCRules1April2011.pdf

Cheers!



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