



Matrixvisa Inc.

www.matrixvisa.com

Immigration Law and International Recruitment

The Hon Jason Kenney, MP
Minister of Citizenship, Immigration and Multiculturism
365 Laurier Avenue West 11th Floor
Ottawa, Ontario
Canada
K1A 1L1
Telephone: (613) 957-1476
Fax: (613) 952-5533

29 August 2012

RE: PROBLEMS OF INTERPRETATION OF THE ALBERTA PILOT PROJECT FOR 6 TRADES WITH REFERENCE TO MILLWRIGHTS AND CARPENTERS (UPDATED LETTER)

Dear Minister Kenney,

This matter concerns Immigration Operational Bulletin 279-D dated 16 July 2012 (See Enclosure 1) and para 7.2.1 of Annex B to the Alberta-Canada Immigration agreement that lists 6 occupations have been listed in a pilot project. According to this agreement and pilot project a foreign national is exempt from obtaining a Labour Market Opinion (LMO) if the foreign national holds an Alberta Qualification certificate or an approval letter from the Alberta Advanced Education and Industry training (AAIT).

Since this agreement was implemented it appears that Service Canada (SC) in Edmonton is refusing all LMO applications for occupations listed in Operational Bulletin 279-D: Millwrights, Carpenters, Heavy Duty Mechanics, Welders, Estimators and Ironworkers.

Service Canada claims that their refusal is supported by Immigration and Refugee Projection Regulation 203 (1) (c):

“203. (1) (c) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;”

An example of an LMO refusal dated 20 August 2012 is enclosed in Enclosure 2.

The Alberta Factsheet about this pilot project is provided in Enclosure 3.

780-409-0931, 780-401-3533 (F), Matrixvisa Inc Executive Centre, Suite 3400, Manulife Place, 10180- 101 Street, Edmonton, T5J 3S4

The CIC Backgrounder about his pilot project is provided in Enclosure 4.

The CIC Notice to Employers is provided in Enclosure 5.

None of the above mentioned documents implies that the Alberta Pilot project described in operational Bulletin 279–D dated 16 July 2012 is compulsory for employers to follow.

Nothing in Chapter FW1 of the Immigration Manual suggests that any exemption to an LMO (such as intra company transferees based on significant economic benefit or a pilot project in this case) is compulsory either. Reference for this can be made to 5.29 (page 56) of Chapter FW1 of the Immigration Manual where the following is written: “ **For requests for work permits based on significant economic benefit, where entry into the labour market is concerned, all practical efforts to obtain an HRSDC opinion should be made before C10 (exemption) is applied**” The language in Chapter FW1 is clear, exemptions to LMOs are never compulsory and that LMO requests are the first choice before applying an exemption. At our office many cases where LMO-exempt but the Temporary Foreign Worker Units (especially Vancouver) advised that a LMO would be required in their opinion.

A carpenter for example, will require 8160 hours and 6 years post apprenticeship experience to challenge the Red Seal examination in Alberta. A millwright requires 9,360 hours and 72 months of ‘hands-on’ work experience as a millwright before the millwright can become eligible to receive an approval letter from AAIT to challenge the millwright examination in Alberta. However the AAIT policy is clear, certification for both occupations remains voluntary.

The present interpretation of SC of this provincial-federal agreement and pilot project is in conflict with provincial rules as it effectively places a bar on foreign trained carpenters and millwrights with less than 6 years experience to enter the province or to remain in the Province of Alberta. However provincial rules allows these individuals to enter the province. It is submitted that if this ultra vires decision remains in place, it will force many carpenters and millwrights in AB to leave Canada upon expiry of the current work permits. Some of these millwrights are highly specialized skilled foreign workers

I have just been informed that personnel at AAIT is not aware of Service Canada’s interpretation of this agreement. I was also informed that AAIT still inform foreign trained applicants in the trades of millwrights and carpenters that they may enter the province without an AAIT assessment or Red Seal.

Employers are not aware that this Pilot Project is compulsory either. If they knew they would not have applied for LMOs in the occupations of millwrights and carpenters.

Our office has requested LMOs before in cases where foreign nationals was possibly eligible for an exemption (such as specialized knowledge workers as intra company transferees) but due to the discretionary nature of decision making in some case at some visa posts, an LMO has been applied for without any objection from SC.

There is also no indication in the Chapter FW1 of the Immigration Manual that any exemption to

the LMO process is compulsory. The message in this chapter is that LMO's take preference before seeking to use an exemption to an LMO. Therefore historically a LMO request has not been refused where exemptions were possible.

Many employers can not renew the work permits of their employees as the workers might not have the required 6 years of post apprenticeship experience or they might not be able to obtain written evidence of this experience as required by the AB government.

I contacted the AB government (Mr Peter Weclaw: Director Immigration Policy and Planning for the AB government) and CIC (Sandra Harder: Director General: Policy Integration and Innovation) last week but have not yet received a response about this issue. The SC Manager in Edmonton, Ms. Linda Wilderman has indicated to our office in an email on 22 August that she is "seeking clarification." The Operations Manager of the AB PNP replied to our email and said that although this pilot project does not effect the PNP and she wrote "...Policy group within our division is well informed on this topic and is working within our division and with the federal and provincial government ministries to alleviate the issues identified..."

It seems that after refusing LMO's in these 6 occupations, many stakeholders are aware of the problem from 16 July 2012 until today (27 August 2012) but my office can not see tangible results. Some foreign nationals are urgently needed in Canada and we need to renew work permits for others.

To summarize, there are different methods to statutory interpretation that includes the following: a) grammatical method, b) systematical and logical approach, c) purposive approach, d) historical approach/method and e) pragmatic approach. In this case a combination of approaches can be used to determine the meaning of a rule:

- a. Grammatical approach. The language of the agreement is clear: It is not compulsory to have an AAIT assessment of provincial qualification certificate.
- b. Purposive Approach. In this approach the *ratio legis* or the purpose of the rule should be considered. What did the maker of the regulation intended to achieve ? What was the intent of the this agreement ? Was it the intent to ensure that only the foreign workers in the 6 trades with more than 6 years experience may obtain LMO's and existing workers with less than 6 years must leave the country ? Alternatively, was the intent to ensure that the employers can employ foreign workers with the correct experience to work with the authority of a work permit? The logical man's approach would be the second interpretation.
- c. Under the historical method/approach the author Cote mentioned the following: "...it is common practice to establish a sort of legislative pedigree, by consulting the enactment that it has replaced, repealed or amended, or the one that served as it's inspiration." If one reviews the method in which exemptions have been used in the past it is clear that it has

never been compulsory. The language in Chapter FW1, in fact, points to the opposite.

- d. In the pragmatic approach the effects of a rule, regulation or statute are considered. The intent and practical intent is to get employers to employ foreign workers in these occupations without going through the hassle of advertising and apply for a LMO as there is a known shortage of these trades. The intent was not to remove those foreign workers with less than 6 years experience or place bar to entry for those with less than 6 years of experience.

As a signatory to this agreement, would you be so kind to indicate if it was the intent of CIC to:

- a. force employers to follow the AITT process for the two voluntary trades (millwrights and carpenters), i.e. is the pilot project compulsory for the two voluntary trades; and
- b. force all current carpenters and millwrights whom is working here with valid work permits with less than 6 years experience out of the province of Alberta.

Our office must submit several urgent cases in these NOC's and clarification is important for my corporate clients to obtain clarification as a matter of urgency.

Yours faithfully



Cobus (Jacobus) Kriek
cobus@matrixvisa.com

Regulated Canadian Immigration Consultant
Member in Good Standing of ICCRC
Membership Number R413711

Enclosure 1: Operational Bulletin 279 D dated 16 July 2012
Enclosure 2: LMO Refusal for carpenter dated 20 August 2012
Enclosure 3: Alberta Factsheet dated July 2012
Enclosure 4: CIC backgrounder dated 16 July 2012
Enclosure 5 CIC Notice to Employers dated 18 July 2012

Citizenship and Immigration Canada

Operational Bulletin 279-D - July 16, 2012

Alberta Pilot for Occupation-Specific Work Permits – Expanded to include 6 (six) additional occupations

Issue

This Operational Bulletin (OB) replaces OB 279-C.

The purpose of this OB is to advise officers of six additional occupations now included in the Province of Alberta's Temporary Foreign Worker (TFW) Annex occupation-specific pilot project (formerly just for the steamfitter/pipefitter occupation).

Background

This TFW Annex pilot project, launched June 1, 2011, in the Province of Alberta, allows foreign nationals to come to Canada to work temporarily in a *specific occupation* and to be issued a Work Permit (WP) that allows them to move freely between employers, without requiring a Labour Market Opinion (LMO) from Service Canada.

This pilot project was established under the TFW Annex to the *Agreement for Canada-Alberta Cooperation on Immigration* which contains the following commitment:

"7.2.1 The Canada-Alberta Working Group on TFWs, defined in section 9.2, will work toward developing occupation-specific (but non-employer specific) WPs for TFWs working in Alberta in the engineering, construction and procurement industries to permit limited mobility of certain high-skilled TFWs within a particular industrial sector."

Expanding the Pilot Project

In addition to steamfitter/pipefitter (NOC 7252), the additional occupations are the following:

- Welder (NOC 7265),
- Heavy-duty equipment mechanic (NOC 7312),
- Ironworker (NOC 7264),
- Millwright and industrial mechanic (NOC 7311),
- Carpenter (NOC 7271); and
- Estimator* (NOC 2234).

Pilot Project Parameters

To ensure the protection of the Canadian labour market, TFWs taking part in these additional occupations (including steamfitter/pipefitter) will be required to have an initial job offer from an Alberta employer or an employer acting on behalf of a recognized Group of Employers (GoE) under the Citizenship and Immigration Canada (CIC)-Human Resources and Skills Development Canada (HRSDC) GoE Pilot.

The job offer from the employer must indicate that the wages offered are consistent with the prevailing

wage rate paid to Canadians in the same occupation in the region and that the working conditions for the occupation meet the current provincial labour market standards.

TFW applicants who have a job offer in the carpenter, estimator, heavy-duty equipment mechanic, ironworker, millwright and industrial mechanic, steamfitter/pipefitter and welder occupations, for a position located in Alberta, from an individual employer or an employer acting on behalf of a recognized GoE under the CIC-HRSDC GoE Pilot, are eligible for either:

- a. a one-year occupation-specific WP or employer-specific WP (with an initial job offer) *or*
- b. a two-year occupation-specific WP or open WP (with an initial job offer) where workers are free to move between employers

depending on whether or not they hold an Alberta Qualification Certificate or a trade certificate recognized in the Province of Alberta at the journeyman level. Information on Alberta Apprenticeship and Industry Training (AAIT) certification requirements to work in a trade in Alberta can be found at www.tradesecrets.alberta.ca.

Eligible Applicants	Application Period	Duration of WP
<p>Uncertified Applicants</p> <ul style="list-style-type: none"> • have an approval letter from AAIT for an application in the Alberta Qualification Certificate Program for one of the trades included under this pilot project, AND • have an initial job offer for a position located in Alberta from an individual employer or an employer making a job offer on behalf of a recognized GoE under the CIC-HRSDC GoE Pilot. 	<p>Apply between July 16, 2012 and July 31, 2013 at a visa office or, if applicable, at a Port of Entry (POE).</p> <p>Once certified, apply at CPC-Vegreville <i>before the initial work permit expires</i> to continue participation in this pilot project (see Certified Applicants below).</p>	<p>One-year occupation-specific WP or employer-specific WP.</p> <p>This initial one-year period is to allow TFWs to meet the certification requirements of AAIT while remaining employed by the initial employer. Visible remarks on the WP must state that the application for extension must be accompanied by the Alberta Qualification Certificate.</p>
<p>Certified Applicants</p> <ul style="list-style-type: none"> • must hold an Alberta Qualification Certificate OR a trade certificate recognized in Alberta (refer to www.tradesecrets.alberta.ca) in one of the occupations included under this pilot project, AND • are currently working for, OR have a job offer from, an employer in Alberta. 	<p>Apply between July 16, 2012 and July 31, 2013, at a visa office or, if applicable, at a POE.</p> <p>If applicants are already working in Alberta, they can apply at CPC-Vegreville by July 31, 2013 and before their initial WP expires.</p>	<p>Two-year occupation-specific WP or open WP.</p> <p>This open WP allows workers to move between Alberta employers in the specific occupation; employers don't need to be entered in the employer field in the system. Instead, they are noted in the system notes.</p>
<p>Qualified Estimators*</p> <ul style="list-style-type: none"> • have a certification by the 	<p>Apply between July 16, 2012 and July 31, 2013, and if already working in</p>	<p>Two-year occupation-specific WP or open WP.</p> <p>This open WP allows workers to move</p>

<p>Canadian Institute of Quantity Surveyors (CIQS); the CIQS website can be viewed at http://ciqs.org, OR</p> <ul style="list-style-type: none"> • have completed a three-year college program in civil or construction engineering technology, OR • have several years of experience as qualified tradespersons in a construction trade such as plumbing, carpentry or electrical. <p>*Note: Qualified estimators are not required to apply to the Alberta Qualification Certificate Program, therefore will not have an approval letter from AAIT.</p> <p>*Employers hiring estimators under this pilot project must ensure applicants have the qualifications to perform the job duties of the occupation.</p>	<p>Alberta, before the original WP expires.</p>	<p>between Alberta employers in the specific occupation; employers don't need to be entered in the employer field in the system. Instead, they are noted in the system notes.</p>
---	---	---

Applicants will be required to meet all other applicable federal criteria including the likelihood they will voluntarily leave Canada at the end of the period authorized for their stay. They must also continue to meet all admissibility criteria in order to obtain status as temporary residents in Canada. Additionally, WP approvals may depend on medical examination requirements.

Extensions

No WP extensions will be issued under this pilot project.

System Instructions

LMO Exemption Code is **T13** in conjunction with R204(c) of the *Immigration and Refugee Protection Regulations*: " ... an agreement entered into by the Minister with a province or group of provinces under subsection 8(1) of the Act." This code must be used on the initial one-year WP and the subsequent two-year open WP.

Both the initial employer-specific WP and the subsequent open WP should indicate in the "Province" field and in the printed "Conditions" that it is only valid for work performed in the province of Alberta and in one of the occupations specified as inclusive to this pilot project.

It should also be noted in "Remarks/Notes" that "*this WP application is in relation to the Province of Alberta Occupation-Specific Pilot Project - OB 279-D*" to assist in statistical research, evaluation and policy-development purposes.

Rationale

The pilot project will assess whether or not the issuance of an occupation-specific, but otherwise “open”, WP in an engineering, construction or procurement (ECP) occupation allows for the successful mobility of a skilled TFW within a particular industrial sector.

A review and evaluation of this pilot project by the Province of Alberta will begin in 2013.

Contact

For more information about this pilot project, call the Immigrate to Alberta Information Service (toll free within Alberta: 1-877-427-6419) or look for the Factsheet on the Alberta Enterprise and Advanced Education website at <http://employment.alberta.ca/Immigration/145.html>.

Date Modified: 2012-07-25

Service Canada Centre # 4745
Foreign Worker Recruitment Branch
Suite 1440 Canada Place
9700 Jasper Avenue
Edmonton, AB, T5J 4C1

2012-08-20

[REDACTED]

Based on an assessment of the labour market, Service Canada (SC) has reviewed your request and is not able to confirm your job offer(s) to the foreign worker(s) identified in our records.

Service Canada's Labour Market Opinion (LMO) is based on specific requirements. Please note that unless the details of the job offer meet with these requirements, Service Canada is unable to issue a positive LMO. The LMO refusal is based on the following:

- Your offer of employment is inconsistent with the terms of a federal-provincial agreement that applies to employers hiring foreign nationals.

After a preliminary screening of your application, Service Canada has determined that the occupation you are requesting is exempt from the requirement for a Labour Market Opinion.

Effective from July 16, 2012 until July 31, 2013, under the Alberta Pilot for Occupation-specific Work Permits, which is jointly administered by Citizenship and Immigration Canada (CIC) and the Government of Alberta, employers hiring temporary foreign workers (TFW) in selected occupations, for work to be performed in Alberta, do not need to apply for a Labour Market Opinion (LMO).

The occupations included in this pilot are:

Carpenter (NOC 7271)
Estimator (NOC 2234)
Heavy duty equipment mechanic (NOC 7312)
Ironworker (NOC 7264)
Millwright and industrial mechanic (NOC 7311)
Steamfitter and pipefitter (NOC 7252)
Welder (NOC 7285)

We were unable to contact you to advise you that a Labour Market Opinion is not required for this occupation.

For information related to the pilot project, call the toll-free Immigrate to Alberta Information Service at 1-877-427-6419 in Alberta or 780-427-6419 if calling from outside Alberta.

Canada-Alberta Temporary Foreign Worker Annex

Additions to Occupation-Specific Pilot

Background

The Temporary Foreign Worker (TFW) Annex is an addition to the *Agreement for Canada-Alberta Cooperation on Immigration*. The Annex includes an agreement to implement a number of pilots.

One of the pilots allows Citizenship and Immigration Canada (CIC) to issue an occupation-specific work permit to TFWs working in Alberta in the steamfitter-pipefitter trade. Six new occupations have been added to the pilot: carpenter, estimator, heavy-duty equipment mechanic, ironworker, millwright and industrial mechanic, and welder.

Under the pilot, TFWs with the appropriate certification or a letter of approval from Apprenticeship and Industry Training (AIT) can come to Alberta to work temporarily in a specific occupation without requiring the employer to have a Labour Market Opinion (LMO) from Human Resources and Skills Development Canada (HRSDC) and Service Canada. Certified workers can move freely between employers provided they continue to work in the same occupation.

To ensure the protection of the Canadian labour market, TFWs taking part in these new occupations (including steamfitter/pipefitter) will be required to have a job offer from an Alberta employer or recognized Group of Employers (GoE) under the CIC-HRSDC GoE Pilot.

Both certified and uncertified workers are eligible to apply to the pilot. A one-year **employer-specific/occupation-specific** work permit will be issued to an uncertified worker with an approval letter from AIT for the Alberta

Qualification Certificate Program. Once certified, the foreign worker can apply for a two-year open work permit, allowing movement between employers.

TFWs working in Canada or applying from abroad who hold an Alberta Qualification Certificate or trade certificate recognized in Alberta can apply for the two-year **occupation-specific/open work permit**, where they will be able to move freely between employers.

Eligibility

The new pilot occupations are both compulsory and optional trades (with the exception of estimator*). Foreign workers in an optional trade will require an approval letter from the Qualification Certificate Program before they are eligible to participate in the pilot. Those workers who hold an Alberta Qualification Certificate or trade certificate recognized in Alberta will require proof of certification. Information on AIT certification requirements to work in a trade in Alberta can be found at www.tradesecrets.alberta.ca.

(*The estimator occupation is not considered a trade in Alberta therefore employers using the pilot must ensure the applicant has the qualifications to perform the duties of that occupation.)

The job offer from the employer must indicate a wage that is consistent with the prevailing wage paid to Canadians in the same occupation in Alberta and that the working conditions for the occupation meet current provincial labour standards.

Applicants are required to meet all applicable federal temporary resident criteria including leaving Canada at the end of the period authorized by their work permit. They must also meet all admissibility criteria in order to obtain status as a temporary resident in Canada.

Application

Eligible TFWs from abroad may apply for a work permit either overseas or, if applicable, at a port of entry into Canada. If applying from outside Canada, go to www.cic.gc.ca/english/information/applications/work.asp and www.cic.gc.ca/english/information/applications/menu-outside.asp.

If applying from within Canada, mail your application to 6212-55 Avenue, Unit 555, Vegreville, AB, T9C 1X6 or apply online at www.cic.gc.ca/english/information/applications/extend-worker.asp. An application fee will apply.

Duration

The pilot will operate from July 16, 2012 until July 31, 2016. All applicants must apply to the pilot within the first year, by July 31, 2013.

To read the Annex, visit www.employment.alberta.ca and click on "Publications" under the Immigration tab.

For more information, visit the Immigrate to Alberta Information Service at www.albertacanada.com/help.

Citizenship and Immigration Canada

Enclosure 4

Backgrounder — Canada-Alberta pilot project expanded to include more occupations

The Temporary Foreign Worker occupation-specific pilot project was established under the *Agreement for Canada-Alberta Cooperation on Immigration* and was launched on June 1, 2011, in Alberta.


This pilot project allows certain Temporary Foreign Workers in specific skilled, in-demand occupations to be issued a work permit that allows them to move freely between employers, without first receiving authorization from Human Resources and Skills Development Canada.

Previously, only the steamfitter/pipefitter occupation was included in this pilot project.

Effective July 16, 2012, the occupations in the pilot program are expanded to also include:

- Welder
- Heavy duty equipment mechanic
- Ironworker
- Millwright and industrial mechanic
- Carpenter, and
- Estimator.

Parameters of the Pilot Project

To ensure the protection of the Canadian labour market, Temporary Foreign Workers taking part in the occupation-specific pilot will be required to have an initial job offer from an Alberta employer or an employer acting on behalf of a recognized Group of Employers. 

The job offer from the employer must indicate that the wages offered are consistent with the prevailing wage rate paid to Canadians in the same occupation in the region and that the working conditions for the occupation meet the current provincial labour market standards.

Eligibility Requirements

Uncertified Applicants

An applicant who has an approval letter from Alberta Apprenticeship and Industry Training (AAIT) for an application in the Alberta Qualification Certification Program for one of the trades included in the pilot and an initial job offer for a position located in Alberta from an employer or a recognized Group of Employers, can apply between July 16, 2012, and July 31, 2013. If approved, they will be issued a one-year Work Permit that allows him or her to work in a specific occupation for one employer until the appropriate provincial certification is obtained.

Additional information on Alberta Apprenticeship and Industry Training (AAIT) certification requirements to work in a trade in Alberta can be found at www.tradesecrets.alberta.ca.

Certified Applicants

An applicant who holds an Alberta Qualification Certificate or a trade certificate recognized in Alberta in one of the occupations included under the pilot **and** who is currently working for, or has a job offer from, an employer in Alberta, can apply between July 16, 2012, and July 31, 2013. If approved, they will be issued a two-year occupation specific/open Work Permit that enables easy mobility in that specific occupation between employers in Alberta.

Qualified Estimators

Applicants applying to work as estimators who are certified by the Canadian Institute of Quantity Surveyors (CIQS) (<http://ciqs.org/>), **or** who have completed a three-year college program in civil or construction engineering technology, **or** have several years of experience as a qualified tradespersons in a construction trade such as plumbing, carpentry or electrical, can apply between July 16, 2012, and July 31, 2013. If approved, they will be issued a two-year occupation specific/open Work Permit that enables easy mobility in that specific occupation between employers in Alberta.

Qualified estimators are not required to apply to the Alberta Qualification Certificate Program, and therefore will not have an approval letter from AAIT. Employers hiring estimators under this pilot project must ensure the applicant has the qualifications to perform the job duties of the occupation.


Date Modified: 2012-07-16



Human Resources and Skills Development Canada

Temporary Foreign Worker Program

Notice to Employers: Expanding the Alberta Pilot for Occupation-specific Work Permits

Effective from July 16, 2012 until July 31, 2013, employers in Alberta hiring temporary foreign workers (TFW) in selected occupations, do not need to apply for a labour market opinion (LMO) from Human Resources and Skills Development Canada/Service Canada. This exemption is the result of the Alberta Pilot for Occupation-specific Work Permits, jointly administered by Citizenship and Immigration Canada (CIC) and the Government of Alberta. 

The pilot, which initially covered only the steamfitter and pipefitter trade (National Occupational Classification (NOC) code 7252), has been expanded to include a total of 7 occupations, including:

1. Carpenter (NOC 7271)
2. Estimator (NOC 2234)
3. Heavy duty equipment mechanic (NOC 7312)
4. Ironworker (NOC 7264)
5. Millwright and industrial mechanic (NOC 7311)
6. Steamfitter and pipefitter (NOC 7252)
7. Welder (NOC 7265)

Until July 31, 2013, TFWs who have a job offer in one of the identified occupations in Alberta can proceed directly to CIC to apply for a work permit.

For more information on eligibility and the conditions pertaining to these work permits, visit [CIC](#).

Date Modified: 2012-07-18