

# ImmQuest

“Qui bene interrogat bene docet” “He who questions well teaches well”

Editor-in-chief: Mario D. Bellissimo C.S.

## Fundamental Change in Skilled Worker Selection

Cobus Kriek, RCIC<sup>1</sup>

The Federal Government’s most recent policy manoeuver has quietly and fundamentally shifted the unsteady balance between its posited concept of an immigrant’s human capital value and Canadian industry’s access to a vital immigrant labour source. On 12 November 2016, Ministerial Instructions were published in the Gazette,<sup>2</sup> which effected a simple reduction in points awarded for “arranged employment” of Express Entry applicants, while simultaneously constituting one of the biggest changes to skilled immigration in decades.

This article will consider the change (brought into force on 19 November 2016) which effected the reduction in points awarded in the Express Entry system<sup>3</sup> for “arranged employment”<sup>4</sup> from 600 points to 50 points out of a total score of 1200 points (‘the November AE change’). It will achieve this by analysing: the immediate impact of the November AE change, the lack of rational and accountability of the change, as well as placing the change in the historical context of Canadian Immigration law.

1 This is part 1 of a two-part article. Part 2 will appear in the April edition of *ImmQuest*.

2 Canada Gazette, Part I, Vol 150, No 46, 12 Nov 2016.

3 Express Entry is an online system developed by Immigration Refugee and Citizenship Canada that is used to calculate a potential immigrant human capital value based on language proficiency, foreign and Canadian work education, foreign and Canadian work experience as well as “arranged employment” (a valid job offer). The total score is 1200 points and the federal government issued invitations between 450 and about 550 points for about 2 years. Therefore applicants with job offers (supported by a provincial government nomination and job offers supported by a Labour Market Impact Assessment (LMIA) obtained 600 points for the valid job offer from a Canadian or about 50% of the total score. If an immigrant had a validated job offer, immigration was basically a guarantee (sans criminal and medical checks).

4 Arranged Employment is a job offer supported by a positive Labour Market Impact Assessment; therefore, it is a validated job offer.

Full Story on page 2

## INSIDE

### Focus—Selecting Skilled Workers

- **Fundamental Change in Skilled Worker Selection** . . . . . 1  
— Cobus Kriek, RCIC
- **Case Tracker: Cases You Should Know!** . . . . . 6  
— Mario D. Bellissimo, C.S.



# Fundamental Change in Skilled Worker Selection

## continued from page 1

Generally, the November AE change:

1. decreases recognition of the skilled labour needs of employers;
2. bears the same root cause of the ongoing and unsuccessful intention of the federal government to determine human capital value through excessive interference in the market place;
3. effects a fundamental shift of power from industry to the federal government based on the premise of human capital value as determined by the Express Entry Comprehensive Ranking System (CRS);
4. significantly affects certain industries without consultation or accountability;
5. has not been supported by evidence from research or due consideration (according to the available information);
6. is in contrast to indicators and research which evidence a trend of unemployment or overqualified employment of economic immigrants that migrate without job offers;
7. is inconsistent with the statutory objectives of the *Immigration and Refugee Protection Act* (IRPA), political objectives of the Prime Minister's office as mentioned in the mandate letters of the Minister of Immigration, Refugees and Citizenship Canada, as well as departmental objectives.

The article concludes that the November AE change was not well coordinated, well researched, or transparent. It was not the result of a consultative or collaborative process and is highly unlikely to result in a better outcome for immigrants, Canadians, or the Canadian economy. Ultimately, it represents yet another example of the Federal Government's philosophy of interference in the market of human capital and so is representative of many of Canada's skilled immigration woes.

## 1. The November Shift & the CRS

The November AE change has largely denied the input of industry in determining the human capital value of an immigrant. Instead, the accepted premise which forms the foundation of the decrease in arranged employment points is Express Entry's CRS points system, which *attempts* to determine the value of human capital. The government states: "The Comprehensive Ranking System (CRS) is a scoring mechanism tied to best predictors of economic success."<sup>5</sup>

It follows that an immigrant's value to our economy will now be almost uninterruptedly represented by Express Entry's fallible CRS points system. It is accepted as an unquestionable truth on which the Federal Government will base their selection of Economic Immigrants.

During 2017, Canada will take in 300,000 immigrants to be divided as follows:<sup>6</sup>

- **73,000 Federal Economic Immigrants**
- 17,000 Federal Caregivers
- 500 Federal Business
- 51,000 Provincial Nominees
- 29,300 Quebec Skilled Workers and Business
- 64,000 Spouses Partners and Children
- 20,000 Parents and Grandparents
- 40,000 Refugees
- 3500 Humanitarian and Compassionate Applications

The November AE change will therefore have an effect on the selection of approximately 24% of total immigration to Canada in 2017. Decreasing the points of arranged employment from 600 to 50 points is a 46% decrease of the total score of 1200 points in Express Entry. The 50 points that applicants will now receive for a job offer represents a mere 4% of the total required points. This is a clear reflection of the decrease in value of a job offer by a Canadian employer to an economic immigrant. No supporting research or motivation was provided to the public leading up to the November AE change. Large Canadian industries including

5 Immigration, Refugees and Citizenship Canada, "Express Entry System – Technical", 22 March 2016, <http://www.cic.gc.ca/english/resources/publications/employers/express-entry-presentation-briefing.asp>

6 Immigration, Refugees and Citizenship Canada, 31 October 2016, "Notice – Supplementary Information 2017 Immigration Levels Plan", <http://www.cic.gc.ca/english/department/media/notices/2016-10-31.asp>

the agricultural industry were not consulted, and no Regulatory Impact Assessment was made available. Such devaluation will invariably suppress the significant potential of economic immigrants to support industry.

Understandably, the development of immigration policy is not an easy task given the many conflicting objectives requiring consideration by policy makers. More grandparents and more refugees could mean less skilled immigrants and vice versa. Many other examples informing the complexity of immigration policy could be mentioned. Complexity should not, however, excuse the need for policy choices to be made on the basis of facts, consultation, and due consideration. In the face of an important policy change, the voice and impact of industries that have an intimate understanding of their own needs should be considered.

**The November AE change evidences that the Federal Government would rather the immigration of a 29-year-old foreign national with a PhD in Egyptian Hieroglyphics or in Nyika (language spoken by a tribe of 10,000 people in Malawi), with 3 years of any skilled work experience, a high language proficiency and no job offer from a Canadian employer, in place of a 40-year-old robotics engineer with a job offer by a Canadian employer that cannot find a Canadian to do the work.**

Without valuing the voice of industry through arranged employment, there are no occupational checks and balances to curtail the wildly indiscriminate manner of determining the Canadian value of “human capital”. Theoretically, there is a potential for up to 73,000 immigrants to immigrate to Canada in 2017 without job offers via Federal Selection from Express Entry. This is despite indications that skilled immigrants without jobs do not perform well after arrival in Canada, especially in conjunction with existing high unemployment of Canadians in certain industries and occupations.

This lack of balanced determination of an immigrant’s value displaces considerations of:

- the performance of immigrants (compared against those born in Canada);
- the ability of economic immigrants to satisfy the needs of employers/industry; and,
- the decrease of the human capital value of immigrants who are reliant on federal and provincial government support to adapt and attain economic success.

The existing flawed CRS points system in combination with the November AE change reinforces the devaluation of employers’ needs and influence in determining the most suitable economic immigrants. Industry’s needs are being replaced by a focus on younger and higher-educated applicants without job offers. With the quiet announcement of the November AE change, the Federal Government has unilaterally decided what is best for Canadian society.

## **2. Lack of Accountability, Reasons & Resulting Complaints**

A lack of accountability and unwillingness to learn from history is a theme throughout immigration policy for skilled workers. Take for example the policy of June 2002 when any foreign national could apply to immigrate to Canada if a score of 67 (out of 100) was reached. This score was calculated by assigning value to Language Proficiency, Education, Work Experience, Age and Family in Canada. Several hundred thousand people applied and eventually waiting periods increased to 7 years. After costly litigation and through retroactive legislation, the Minister of Immigration returned all the applications in the queue and refunded all fees. This was an immigration policy fiasco and a world-class embarrassment for Canada. Taxpayers’ money was squandered on a grand scale. Interestingly, the current system of Express Entry does not fundamentally differ in the way that immigrants are selected when compared to the 2002 failed program; it is again a points system largely based on age, experience, education, and language proficiency.

Access to Information Requests submitted to obtain the rationale and research which would support the decrease in points of the November AE change have been answered with a request for a 3-month extension (in addition to the statutory 1-month waiting period). What remains in the interim is a complete absence of clear and comprehensive research that should have been made available to the public. This silence leads me to believe that the November AE change was a “shoot from the hip” policy that lacked foundation, research, or industry consultation. It is the outcome of an elitist approach of a handful of bureaucrats about how to shape Canadian society, without an informed understanding of immigration’s potential to inform a sustainable Canadian economy.

In the months after the November AE change, employers from many industries (automotive, heavy manufacturing, tourism, mining, and agriculture) have written to the Minister of Immigration, Refugees and Citizenship to express the serious concerns and challenges they now face. Highly skilled foreign nationals who they intended to employ permanently and who would fill specific labour needs will no longer be able to obtain permanent residence as a result of the lowering of the Express Entry points for validated job offers. This is especially true in the case of Ontario, where the Immigrant Nominee Program had so many applications that it was actually closed to new applications for months. I predict that as industries flock to the provincial nominee programs for a solution, limited provincial quotas will result in even more congestion and backlogs.

At least one very large and vital industry organization has attempted to meet with the minister of Employment and Social Development Canada (ESDC) without success. The objective was to discuss the challenges with the LMIA process and the problems with the drop on value of arranged employment (job offer supported by a LMIA). The industry organization in question has been instructed to meet with parliamentary secretaries instead. With the refusal to meet industry leaders, the cabinet is sending the message that they are not interested or willing to accommodate the immigration needs of industry.

### 3. Official Explanation & Research

At this time, the only plausible official explanations for this drastic decrease in arranged employment points could be as follows:

- On 16 January 2017, the Ontario Bar Association held a seminar titled, 'Express Entry: What the recent Changes Mean for your Client'. As part of the presentation, a quote was used from the IRCC [Immigration, Refugees and Citizenship Canada] which stated the following: **“Arranged Employment points strike a balance between labour market responsiveness and impact on immigrant outcomes.”** IRCC was asked what this sentence meant and the response was just as fuzzy: **“The reduction in job offer points addressed the overemphasis on arranged employment, which had allowed candidates with very low levels of human capital to displace those with much higher human capital. Express Entry is a competitive system that actively and purposefully issues invitations only to the candidates**

**who are best positioned for economic success in Canada. Because invitations are issued on a “top down” basis, elevating candidates with lower levels of human capital (by providing higher levels of points for arranged employment) necessarily results in fewer invitations to candidates with higher levels of human capital. In large enough numbers, these trade-offs have the potential to constitute a significant opportunity cost for Canada’s economy.”**<sup>7</sup>

- A regional IRCC representative was questioned and he explained it as follows: **“One way to demonstrate labour market responsiveness was the quasi-guarantee that employer recruitment would lead to an ITA. High points for the LMIA + job offer accomplished this. However, 600 points displaced a great many applicants who had high human capital, who, according to data and research, have better long-term outcomes. The new “balance” is in the 50 points, which give a sufficient head start to employer-recruited candidates whose human capital is already reasonably high, without distorting that advantage approximately 10000 other individuals in the pool.”**<sup>8</sup>

## 4. Outcomes & Performance of the Federal Government’s Economic Immigrant Vision

While the IRCC appears to put faith in their arbitrary determination of what “high human capital” constitutes, they do not appear to have considered all relevant issues. Research has shown that, in past decades, skilled immigrants without job offers performed worse in the economy than Canadian-born workers. Here are a few acutely relevant examples:

- A report was published during Dec. 2014 by the Panel of Employment Challenges of New Canadians.<sup>9</sup> The panel’s name is self-explanatory.
- Media articles are written about highly qualified immigrants without jobs such as the brilliant “Skilled

<sup>7</sup> E-mail from [ImmigrationRepresentatives@cic.gc.ca](mailto:ImmigrationRepresentatives@cic.gc.ca) on 13 Feb 2017, reference number REP-2017-0116REP-2017-0116.

<sup>8</sup> E-mail dated 25 Jan 2016, Name of Author withheld.

<sup>9</sup> Employment and Social Development Canada, “Panel on Employment Challenges of New Canadians: Summary of the Panel’s Online Consultation”, 13 April 2015, <https://www.canada.ca/en/employment-social-development/programs/foreign-credential-recognition/consultations/emp-challenges.html>

Immigrants wasting their talents in Canada”, published in the *Calgary Herald* on 14 June 2016.<sup>10</sup>

- In a *Globe and Mail* article written by David Parkinson on 18 February 2017, the following was mentioned:<sup>11</sup>
  - “Experts say underemployment has gotten more acute over the past two decades, as the countries of origin has shifted away from English speaking countries and Europe, where education systems and professional standards look a lot more familiar to Canadian employers, and increasingly towards Asia. The result, they say, are proverbial PhD’s driving taxis.”
  - “Statcan data shows that in 2014, the median income for a new immigrant within two years of landing in Canada is 27% lower than the country’s overall median income.”
  - “...critics say that before Canada further steps up its immigration targeted at the most skilled and educated workers, it needs to better address the underemployment among skilled immigrants that has become a nagging concern in Canada’s biggest urban centres. The Conference Board of Canada has estimated that the country’s immigrant population loses the equivalent of \$12.6 billion per year in income from working jobs for which they are overqualified...”
- The *Edmonton Journal* published an article titled, “University-educated immigrants face tough challenge finding employment in Edmonton”.<sup>12</sup>
- ESDC disclosed a 14-page report on 16 October 2015: “Employment Social Development Canada paper referred to Immigrants and the Labour Market: Barriers and Challenges to Immigrants’ Labour Market Integration”<sup>13</sup> The report was previously classified as secret. Although it has now been released, it is heavily redacted. In the report the following are mentioned:

- In 2014, the unemployment rate for permanent residents was 11.7 %, while the rate was 5.2 % for Canadians.
- 24% of foreign-educated immigrants with degrees leading to work in regulated occupations worked in their chosen field. This is in comparison to 62% of Canadian-born graduates.
- Between 2001 and 2009, the gap in wages between immigrants with Bachelor degrees and Canadian-born applicants with Bachelor degrees is \$23, 800CAD per annum.
- The vast majority of newcomers are not selected for their labour market readiness.
- The unemployment rate for immigrants is higher than for Canadian-born skilled workers
- In 2006, 57% of Canadian-born applicants were overqualified for their jobs but 77% of foreign-trained immigrants were overqualified for their jobs.
- About ⅓ of male immigrants between the ages of 25 and 45 leave Canada within 25 years of arriving. About 60% of the leavers do so within the first 12 months of arriving in Canada.

- The following was reported by the CBC:<sup>14</sup>
  - “A pilot Conservative project to loan money to help skilled immigrants land jobs in their field could be revived as a permanent program under the Liberal government... One of the biggest barriers for newly arrived doctors, dentists, engineers and high-tech professionals is coming up with the cash to pay for the required licensing fees, exams and training upgrades... Fehr said even a few thousand dollars is a significant barrier for many immigrants who are unemployed or working at survival jobs like fast food restaurants or taxi and ride-booking services... In a pre-budget submission to the Commons finance committee, she requested a three-year commitment

10 Alia Dharssi, *Calgary Herald*, 14 September 2016, “Skilled immigrants wasting their talents in Canada” <http://calgaryherald.com/news/national/skilled-immigrants-wasting-their-talents-in-canada>

11 David Parkinson, *The Globe and Mail*, “As Boomers Go, Newcomers Are the Answer”, 18 Feb 2017, page B8-B10, <http://www.globeinvestor.com/servlet/ArticleNews/story/GAM/20170218/RBCDCOVERIMMIGRATION>

12 Juris Graney, *Edmonton Journal*, “University-educated immigrants face tough challenge finding employment in Edmonton”, 4 Oct 2016, <http://edmontonjournal.com/news/local-news/university-educated-immigrants-face-tough-challenge-finding-employment-in-edmonton>

13 ESDC report named ‘A copy of the Employment Social Development Canada paper referred to Immigrants and the Labour Market: Barriers and Challenges to Immigrants’, Labour Market Integration, published on 16 Oct 2015, ESDC ATIP File number A -2016-00038.

14 Kathleen Harris, CBC News, ‘Liberals look at making skilled immigrant loans pilot project permanent’, 5 March 2017, <http://www.cbc.ca/news/politics/skilled-immigrants-loanscredentials-1.4002948>.

of \$24.8 million that includes loan capital investment, operating costs and infrastructure.”

This raises the question of why \$24.8 million of taxpayer money is being wasted in this manner. Why are skilled immigrants (based on the federal immigration selection methods) working in survival jobs such as taxi drivers? Decreasing the number of points for job offers to skilled immigrants and bringing in more skilled workers without jobs will just make the situation worse. This pilot project to assist newcomers is just a simple solution to a more serious problem. Root cause analyses will indicate that the real solution lies in a method of selection which does not give due consideration to the needs of employers and, ultimately, the country.

## Case Tracker: Cases You Should Know!

Mario D. Bellissimo, C.S.

### Citizenship – Adoption

**Case:** *Leung v. Canada (Minister of Citizenship and Immigration)*

**Deciders:** John A. O’Keefe

**Court:** Federal Court

**Citation:** 2016 CarswellNat 76, 2016 FC 41

**Judgment:** 14 January 2016

**Docket:** T-474-15

45 The Federal Court of Appeal’s statements in paragraph 57 and following are based on the alternative situation where a genuine parent-child relationship and the best interests of the child are not established in a Canadian court judgment. Consequently, that the best interests of the child and a genuine parent-child relationship are not necessarily found by the officer in the present case does not affect the applicability of the statements from *Dufour* that the inference of intent to defraud cannot be drawn based on speculation and must be based on logical reasoning.

52 I agree with the applicants that the officer’s finding relating to the consent of the birth parents was not reasonable, as it ignores and does not address the evidence that efforts were made to locate the child’s birth parents, in accordance with Chinese law. Moreover, the officer never connects his finding on this

factor to his findings that the adoption was not in the child’s best interests and was one of convenience.

53 I also agree with the applicants that the officer’s finding relating to whether the child was abducted, sold or the subject of improper financial gain was unreasonable. There is no logical link between the deficiencies in the evidence relating to the child’s provenance and whether she was abducted, sold or the subject of improper financial gain. The officer was not entitled to make this finding simply because the evidence was deficient; it needed to be justified in the evidence. This is supported by section 12.9 of the CP14 Manual. Moreover, the officer never connects the finding on this factor to the findings that the adoption was not in the child’s best interests and was one of convenience.

54 Further, I agree with the applicants that, to refuse the case on this basis, according to section 12.9 of the CP14 Manual, the officer was required to contact the Case Management Branch. While not binding, contrary to the respondent’s argument, the language of the CP14 Manual does not restrict this requirement only to situations where evidence, rather than credibility assessments, is being considered to make a finding of child trafficking or undue gain.

### Citizenship – Mandamus

**Case:** *Valverde v. Canada (Minister of Citizenship and Immigration)*

**Deciders:** John A. O’Keefe J.

**Court:** Federal Court

**Citation:** 2015 CarswellNat 4693, 2015 FC 1111

**Judgment:** 15 September 2015

**Docket:** T-1014-14

66 About the first element, I find although the delay has not been longer than the nature of the entire citizenship application process, the hold was placed on the applicant’s citizenship application without statutory authorization in August 2013. This has unreasonably delayed the application being referred to a citizenship judge for consideration. As for the second element, the applicant and her counsel are not responsible for the hold and the third element, the justification for the hold, although now authorized by section 13.1 of the *Citizenship Act*, was not then authorized by statute. Therefore, I find the hold resulted in an unreasonable delay in the performance of CIC’s statutory obligation to refer the applicant’s file to the citizenship judge for consideration.

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### 5. Needs of Employers & Conflicting Policies

In my opinion, the biggest indictment of Canadian federal immigration programs such as the Express Entry system, although diminishing, is the number of Labour Market Impact Assessment (LMIA) positions requested each year:<sup>2</sup>

2008: 207,449	2013: 163,035
2009: 134,092	2014: 104,242 (8,686 per month)
2010: 142,012	2015: 113,580 (12,620 per month)
2011: 152,421	2016: 89,270 (Jan to Sept 2016 or about
2012: 199,730	9,918 per month)

These numbers represent both lower skill (Skill Level C and D) and higher skill levels (Skill Level 0, A and B). In turn, many factors can affect the number of LMIA positions being approved annually, including:

- cost of an LMIA application;
- waiting periods for decisions;
- employers that do not reapply after being refused;

<sup>1</sup> This is part 2 of a two part article. Part 1 appeared in the March 2017 edition of *ImmQuest*.

<sup>2</sup> <https://www.canada.ca/en/employment-social-development/services/foreign-workers/reports/2014/lmia-annual-statistics/province.html>; <https://www.canada.ca/en/employment-social-development/services/foreign-workers/2015-quarterly-labour-market-information/province.html#TOC2>

Full Story on page 2

## INSIDE

### Focus—Selecting Skilled Workers, Continued

- **Fundamental Change in Skilled Worker Selection** . . . . . 1  
— *Cobus Kriek, RCIC*
- **Case Tracker: Cases You Should Know!** . . . . . 6  
— *Mario D. Bellissimo, C.S.*



# Fundamental Change in Skilled Worker Selection

## continued from page 1

- the economic climate;
- uncertainty in the minds of employers about the LMIA process; and
- the supply of skilled labour from other immigration programs such as Express Entry.

There are doubts whether the current model of Express Entry and preceding types of selection methods represent the needs of employers. If Express Entry or other Canadian federal immigration programs had provided industries with the skilled immigrants they need to grow, become more productive, increase profits, and become internationally more competitive, the number of LMIAAs should have decreased steadily over time (relative to other factors such as those mentioned above).

For a short period between January 2015 and November 2016, employers had more influence with 600 points (out of 1200 points) awarded for job offers supported by a LMIA. Still many employers faced LMIA refusals for foreign nationals they identified, and failed to relocate the individuals to Canada, even just to work and fill the labour shortage. If the LMIA process had resulted in more job offer approvals in this period, we would have seen industry play an important and significant role in the selection of skilled immigrants that Canada deserves.

### (i) IRCC & ESDC NOC Incongruence

The failure to recognize employer's needs in Express Entry is demonstrated by the lack of effective and strategic coordination between IRCC and ESDC. This incongruence is clearly expressed in the following comparison of LMIA and Express Entry approvals of applicants in the same NOC **between January 2015 to July 2016 (18-month period)**<sup>3</sup>:

- **NOC 4011 – University Professors and lecturers:** 745 applicants received their permanent residence (PR) visas via Express Entry from IRCC. ESDC issued 505 positive

LMIAAs and refused 177 LMIAAs in NOC 4011. The result was an amazing 240 university professors (1/3 of NOC 4011 applicants) selected during this period were selected without job offers (LMIAAs). It appears there is no information as to which fields these University professors received their Masters or PhD degrees in. IRCC has no information I could find about the education of these PhD holders. Yet by virtue of selection IRCC deems them to have a high human capital value based on the Express Entry formula.

- **NOC 2171 – Information System Analysts:** A total of 1255 applicants obtained their permanent residence visas as via Express Entry. ESDC issued 390 positive LMIAAs and 735 negative LMIAAs. Roughly 850 or 70% of NOC 2171 immigrants arrived without job offers.
- **NOC 2173 – Software Engineers:** 940 applicants obtained PR visas via express entry. ESDC issued 449 positive LMIAAs and 585 Negative LMIAAs. About 500 software engineers obtained permanent residence without job offers. Once again ESDC refused 585 LMIAAs and IRCC issued visas in the same NOCs to about 500 foreign nationals without LMIAAs.
- **NOC 2174 – Computer Programmers and Interactive media developers:** 935 applicants obtained PR visas from IRCC. ESDC issued 451 positive LMIAAs and 1170 negative LMIAAs. Therefore, about 1/2 of immigrants in this NOC arrived without job offers.

Could there be other reasons why a specific LMIA for a NOC could be refused beyond category? Surely, but given the numbers one must question where is the coordination? How is the market being protected and how are the needs of Canadian employers being heard and recognized in this system? After all, ESDC, the government pillar for promoting a healthy Canadian labour market, is refusing applications while IRCC is approving immigration applicants in the same occupations via the Express Entry CRS tool.

### (ii) ESDC Name Change Policy

Another example of the lack of coordination can be demonstrated by the following: ESDC has an in house policy about name changes. This would allow an employer to change the name on a LMIA after it was approved. However, in 2 Nov 2016, the Name

<sup>3</sup> Presentation by IRCC named "Refocusing Express Entry Stakeholders Consultations" 26 July 2016. Access to Information request ESDC File A-2016-01023/DA dated Oct 2016 and Access to Information Request ESDC file A-2016-0192/EM dated 14 Oct 2016.



Change Directive was updated internally without public communication that instructed Service Canada officers not to allow name changes for LMIA that can be used for a work permit and permanent resident status (so called “dual LMIA”). On 12 Nov 2016, IRCC decreased the points for these LMIA and many of the immigrants that obtained a LMIA after 12 November 2016 did not have enough points to emigrate. Service Canada refuses to allow any name changes and requires employers to re-advertise, reapply and again pay for the cost recovery fee. This has resulted in an unnecessary and artificial increase in LMIA for the New Brunswick Office.

### (iii) Global Talent Stream

The lack of strategic coordination has become more evident in a new project called “Global Talent Stream”, which was announced on 9 March 2017 by Navdeep Bains, Minister of Innovation, Science, and Economic Development, and Patty Hajdu, Minister of Employment, Workforce Development and Labour. This project attempts to attract skilled workers to employers who are involved in innovation.<sup>4</sup> The launch date is 12 June 2017. The following is quoted from the Globe and Mail on 9 March 2017: “The ministers declined to put a number on how many applications they expect to get for the Global Talent stream. “Demand will be generated by companies, not generated by individuals living in other countries,” Ms. Hajdu said”<sup>5</sup> The Minister of Innovation, Hon. Bains recognizes the needs of employers. However, after arrival these immigrants potentially would not be able to become permanent residence due to the drop-in points in Express Entry which is under the control of IRCC. Where is the integrated strategy?

Ministers should coordinate their strategies and give direction to the bureaucrats for regulations, ministerial instructions and rules to follow with one clear national/federal immigration strategy. That would be a top-down approach. Right now it seems as if policies from different departments are in conflict with one another. Different industries fight and lobby for their own unique immigration solutions resulting in an immigration policy landscape becoming more scattered and complex.

<sup>4</sup> <http://www.theglobeandmail.com/report-on-business/canada-to-make-skilled-worker-permits-easier-to-get-in-wake-of-us-delays/article34246962/>

<sup>5</sup> *Ibid*

### (iv) Certain Provinces Recognize the Needs of Employers

The needs of employers receive strong recognition in some provinces:

- In Saskatchewan (SK) skilled immigration is largely driven by immigrants with job offers from SK based employers.
- In British Columbia (BC) the quota of skilled immigrants that can be selected from the federal Express Entry pool (1000 applicants) is driven by immigrants with job offers
- In Nova Scotia (NS) the quota of skilled immigrants that can be selected from the federal Express Entry pool (1000 applicants) is driven by immigrants with job offers from NS Employers and currently working in the province.
- The Atlantic provinces of New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island have negotiated a small quota of 2000 people to be allowed to emigrate with job offers from Atlantic based employers during 2017 alone. It is important to note that the Atlantic Provinces did not ask for a quota of 2000 immigrants from the Express Entry pool but requested that the program is driven by employers.

## 6. Root Cause Analyses

In my view, why the programs fail to thrive is the interventionism of IRCC in the market place for human capital. Take for example the immigration strategy that was launched in June 2002, mentioned at subpoint 2 from part 1 of this article to demonstrate a lack of accountability in immigration policy. This same approach is symptomatic of the issue at hand, marketplace interference. The 2002 policy allowed hundreds of thousands of applicants to apply to immigrate to Canada without job offers from Canadian employers. The unbearable effect was realized too late and corrected with unfair retrospective legislation and resulting in lengthy court proceedings.

A decade later IRCC we have Express Entry, technologically it is a great step forward but the underlining principles of selection are very similar to the failed June 2002 experiment; the value of an immigrant again is based on a formula with a limited role of employers in the decision making. For decades IRCC has believed in its ability to predict the shortages in industry by developing

an Occupation-in-Demand List (or a General Occupation List). Why does this not work? There is just too much information to be analyzed and acted upon that it becomes inefficient to make decisions about demand and/or supply. The supply and demand in the market for most products and services changes too fast to be accurately followed by IRCC. The tool is there to establish the real need of industry and to satisfy the need for imported skilled labour — the LMIA process. But there must be coordination, integration and the needs of employers, in my view, should drive the process.

The complexity of a modern market place is best described through an analogy with the market for tomatoes. The government (federal or provincial) does not decide which companies must import tomatoes, what type of tomatoes must be imported, where the tomatoes must be sold and at what price. Imagine if the federal government would be involved in the market for tomatoes and attempted to predict supply and demand. All logical and educated individuals would say that this will **not** work.

Our government has been involved in general occupation lists for decades (occupation lists, in the minds of the researchers at IRCC reflect the demand of skills by industry) and now in determining an immigrants value with a Express Entry formula. By allowing such lists or formulas to be created and implemented, the message is that the Canadian Federal government's intervention in the market for human capital is acceptable, but intervention in the market for tomatoes is not.

The federal government has the important role to ensure the imported tomatoes are not rotten or carry disease. Similarly, government needs to ensure that imported human capital does not hold risk for Canadian population by checking for criminality and health. That is where intervention should end.

The tool is there to establish the real need of industry and to satisfy the need for imported skilled labour — the LMIA process. But there must be coordination, integration and the needs of employers, in my view, should drive the process.

## 7. Measured against Objectives

Subsection 3(1) of the *Immigration and Refugee Protection Act* (IRPA) indicates, *inter alia*, the objectives of skilled immigration:

- (a) to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;
- (c) to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada;
- (e) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society;

By ignoring the needs of employers and Canadian industry these objectives are not achieved. As explained above, skilled immigrants are effectively underemployed and filling emergency gaps in the workplace. Also, skilled Immigrants continue to immigrate in occupations for which there exists significant unemployment. This benefits no one in the workplace. Subsection 12(2) of IRPA indicates the following: (2) A foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada.

The concept “economically established” is not defined and is a grey area. If a PhD is delivering pizzas are they economically established? One could say “yes” as they do not receive provincial social assistance. However, a holder of a PhD is supposed to be at a Skill Level 0 or A, and therefore if such an immigrant is working at skill level C or D is that person economically successful? Some of the political objectives given to former Minister of IRCC, John McCullum, in the Prime Minister's Mandate letter in 2015 were as follows:

- .....new, ambitious plan for a strong and growing middle class. Canadians expect us to fulfill our commitments, and it is my expectation that you will do your part in delivering on those promises to Canadians.
- We made a commitment to grow our economy, strengthen the middle class, and help those working hard to join it;
- Economic growth, job creation, and broad-based prosperity.
- Align our resources with priorities, in order to get the results we want and Canadians deserve and close collaboration with your colleagues.

By allowing skilled immigrants to enter Canada only to be underemployed in low skill jobs is not growing the middle class. The current process of Express Entry could also be resulting in importing unemployment as all occupations are being allowed to emigrate without any consideration of the unemployment rate that already exist in Canada in specific occupations. This will not grow the economy. Again, the lack of coordination between IRCC and ESDC is not aligning our resources with priorities.

IRCC's departmental objectives<sup>6</sup> indicates the following: The goal of the Federal Skilled Workers (FSW) Program is to select highly-skilled immigrants whose high human capital enables them to contribute to Canada's long-term national and structural labour market needs, in support of a strong and prosperous Canadian economy.

It is doubtful if the labour market needs by employers will be satisfied by a high CRS score.

## 8. Conclusion

Canada has a mosaic of people, both in culture and in skill level. To focus primarily on highly skilled immigrants without jobs while, as an example, ignoring areas of labour need from food service supervisors, cooks, chefs, farm supervisors and mechanics for positions that cannot be filled from within Canada (which are all skill level B and also skilled positions) is not sustainable.

The preferred type of immigrant being allowed to enter Canada (a focus on young applicants with masters or PhDs without job offers for vacant positions) after the November AE change:

- will not satisfy the needs of employers/ industry;
- will not consider or ensure appropriate employment of the applicants in the occupations for which they are trained and selected; and,
- will not satisfy the immigration objectives as mentioned in IRPA and the letters of mandate from the Prime Minister's office.

Indications are that skilled economic immigrants have not performed well after arrival for many years. The source of the problem is market interference by the federal government and a

major decrease in the power of selection of skilled immigrants by industry (Canadian employers).

The best indication of which type of immigrant is needed for vacant jobs in Canada would be the LMIA process which has enormous potential for securing the immigrants we require and to ensure that the skilled immigrants are not entering Canada in positions for which there is already significant unemployment. The LMIA process could be the hen that lays the golden egg for skilled immigration to Canada but we must overcome high refusals, lack of clear policy, a refusal by the government to answer policy questions related to the LMIA process and a lack of transparent policies within ESDC.

The employers that are fortunate enough to obtain a positive LMIA are then faced with a significant decreased value of that job offer in the Express Entry point distribution so that their employees cannot obtain permanent residence through a federal immigration program. So, it appears that policy for skilled immigration is not flowing from a clear national strategy. To borrow from that famous (and admittedly overused) saying from Albert Einstein, *Insanity: doing the same thing over and over again and expecting different results*. Let's work together to effect that different result that will benefit all Canadians.

<sup>6</sup> IRCC Reports and Plans and Priorities 2016-2017, <http://www.cic.gc.ca/english/resources/publications/rpp/2016-2017/#a2.1.1.1>