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**NAVIGATING FROM  
EXPRESS ENTRY TO  
PERMANENT RESIDENCY:**

**CRITICAL RISK AND  
COMPLIANCE ISSUES**

# / Evelyn L. Ackah / Founder/Managing Lawyer



# PRESENTATION OUTLINE

- I. Immigration Glossary
- II. Express Entry Overview
- III. How Express Entry Works
- IV. Problems with Express Entry
- V. Transition from Temporary to Permanent Status
- VI. Express Entry Fact Patterns
- VII. Summary and Final Points

# / PART I

## IMMIGRATION GLOSSARY

# Canadian Immigration Glossary

- EE – Express Entry
- ITA – Invitation to Apply
- PR – Permanent Residence
- TFW – Temporary Foreign Worker
- CIC – Citizenship and Immigration Canada
- LMIA- Labour Market Impact Assessment
- PNP – Provincial Nominee Programs

# Canadian Immigration Glossary

- FSW – Federal Skilled Worker
- FSTP – Federal Skilled Trades
- CEC – Canadian Economic Class
- CRS – Comprehensive Ranking System

## / PART II

# EXPRESS ENTRY OVERVIEW

# Express Entry Overview

## How the PR System Used to Work:

- **First in/First out** based on submission date
- **Individuals** could decide when and how they wanted to apply for PR on their own terms
- So long as they met the requirements, they would likely qualify for PR
- They would complete all forms, do language tests, medicals etc. and submit by mail to CIC for processing
- Good communication available with CIC officials reviewing application
- Processing times were 12 to 24 months

# Express Entry Overview

## How PR System Now Works:

- Launched on January 1, 2015
- Designed to process economic PR applications faster and supposedly more efficiently
- An electronic application management system where candidates complete their profile
- No longer the individual deciding to apply independently
- EE system now controls who is eligible for PR – now must wait for Invitation to Apply
- Processing times now 6 to 8 months

# Express Entry Overview

## What has Changed?

- All Economic Class PR categories impacted:
  - Federal Skilled Worker
  - Canadian Experience Class
  - Federal Skilled Trades
  - Provincial Nominee Programs (with the exception of Alberta)

# Express Entry Overview

## **Express Entry creates new challenges:**

- What if the candidate is not chosen – how else can they become a PR? Limited Options
- What if the candidate's work permit expires and the candidate is still not Invited to Apply?
- It is all automated – loss of discretion or human touch on files – no ability to speak with a live person
- Those without Labour Market Impact Assessments will be lower in the ranking – major concern
- Those without PNP certificate will also rank lower
- **Considerable frustration with the online technology**

# Express Entry Overview

## Not a positive change for everyone:

- Lower-skilled workers are negatively impacted by EE
  - NOC C and D workers are not eligible
- For many lower-skilled workers, PNP may be the only option – these provincial programs are constantly being amended – no guarantee for PR
- The processing timelines for PNPs across Canada are very long and may lead to the situation of work permits expiring and requiring LMIA's to maintain status in the interim

# / Express Entry Overview

**Not a positive change for everyone: NOC Code C and D Workers**

# HOW EXPRESS ENTRY WORKS

# How Express Entry Works

- **FSW PR** - there is a 67 point threshold that must be met (hasn't changed) before one can qualify – education, work experience, proof of funds, language ability (English and/or French)
- **CEC PR** - all skilled occupations are eligible so long as the applicant has a minimum of 12 months of qualifying skilled work experience (NOC O - **Management A - Professional** or B – **Technical/Skilled Trades**)

# How Express Entry Works

- **PNP PR** - if you have a nomination certificate already - obtain 600 points toward EE – most provinces have this – except Alberta
- **LMIA PR** – if you have an approved LMIA – the approval can be used to obtain 600 points toward EE – guarantees selection for PR

# / How Express Entry Works

- Log onto the following link:  
<http://www.cic.gc.ca/ctc-vac/ee-start.asp>
- The link will go through a series of questions and at the end will tell you if you **may be eligible** for Express Entry. It will also give you a personal reference code, which will assist the applicant after the applicant creates their CIC account

# / How Express Entry Works

- CIC will request the candidate submit their online profile and will request they set up their electronic “key” for secure access
- Candidates will enter the personal reference code, which will then lead to a series of questions the candidate will need to answer
- Review the questions and answers and submit profile
- All documents must be translated if not in English or French

# How Express Entry Works – Step 1

## Create the Profile

- Create online profile and provide details about education, skills, work experience, language ability, education and other details
- Candidates must know which of the categories they are applying under: FSW, CEC or FSTP
- Candidates without current employment or a Canadian Job Offer (with an LMIA) will need to register with Job Bank
- Candidates will need to have their language tests (IELTS, CELPIP or TEF) results and we recommend have their Educational Credential Assessment (ECA) prior to applying

# How Express Entry Works – Step 1

## Documents You May Need:

- Birth/Adoption/Marriage/Divorce Certificates
- School Records/Diplomas/Transcripts/Degrees
- Trade/Professional Certificates and Licenses
- Letter of reference from former employers
- Educational and Professional qualifications
- Address and Travel Details since age of 18
- Police Certificates

# How Express Entry Works – Step 1

- Candidates are given a Human Factor score out of 500 points that indicates where they rank
- Skill transferability points can provide up to 100 additional points
- Based on CRS and Human Factor: Skills, Work Experience, Language Ability, Education, Age, Family composition etc.
- Candidates with an LMIA or PNP will receive an additional 600 points
- Total maximum points available is 1200

# / How Express Entry Works – Step 1

Once the profile has been submitted and the candidate has met the requirements for at least one of (CEC, FSW, FSTP) the candidate will be entered into the pool

# How Express Entry Works – Step 2

## Receive Invitation to Apply

- Candidates wait in the pool for a bi-monthly (approx. 2000 ITAs) or monthly selection to take place (approx. 4000 ITAs)
- Once they receive an ITA they **ONLY** have 60 days to complete their PR application for submission - **no exceptions**
- Completion of PR application is all done online – you must have a complete application before 60 day deadline

# / How Express Entry Works – Step 2

## **If An Invitation to Apply Is Received:**

- The candidate has only 60 days to submit their completed Permanent Residency application
- If it is incomplete – The candidate may face their offer being rescinded and the candidate will have to go back into the pool and wait to be selected again

# How Express Entry Works – Step 2

## Police Clearance Certificates

- Candidates should apply for all police clearance certificates at the time they submit their application in the pool as some countries take months to issue
- Police clearance certificates are only valid for 6 months for country applicant currently resides
- You can use old police certificates for countries applicants lived for 6 months or more

## How Express Entry Works – Step 2

- Express Entry Profiles will be valid for one year
- If the candidate is not given an ITA within 12 months, they will need to resubmit – all while ensuring they maintain valid status in Canada
- CIC indicates that they will process the majority of complete applications within six months or less (from the time the completed application has been submitted)

# How Express Entry Works – Step 3

## Labour Market Impact Assessments

- If the company obtains the LMIA for the purpose of Express Entry, the fee is waived
- Once approved the candidate will be able to update profile and will be allotted an extra 600 points
- If the company obtains a general LMIA (not related to supporting Express Entry PR) the fee is \$1000

# / How Express Entry Works – Step 3

- If the candidate does not have a:
  - Valid job offer (with an LMIA!!) or
  - A nomination from a province or territory
- The candidate will be required to register with Canadian Job Bank in order to finish their Express Entry profile
- If the candidate does not submit the profile within 30 days of creating their profile, it will expire

# How Express Entry Works – Step 4

## Provincial Nominee Programs

- If the applicant has obtained a PNP approval, they can use it for additional 600 points for EE in all provinces except for Alberta
- Once approved the candidate will be able to update profile and will be allotted an extra 600 points and almost guaranteed to receive an ITA

# How Express Entry Works

- The Express Entry profile that is submitted must be 100% truthful as the information will be verified during the Permanent Residency application
- Any incorrect information could lead to the offer being revoked at any time until issuance of Confirmation of Permanent Residence
- If the candidate fails to respond or file application after receiving the ITA within 60 days, the offer will be rescinded
- If CIC believes the candidate has **misrepresented** themselves, they may face the consequences of misrepresentation – can be barred for up to 5 years for any immigration applications

# / PART IV

## PROBLEMS WITH EXPRESS ENTRY

# Problems with Express Entry

- Citizenship and Immigration Canada designed the Express Entry portal to be “user friendly”
- CIC advises that potential applicants do not need an immigration consultant or a lawyer but that’s hardly the reality
- <http://www.cic.gc.ca/english/department/media/notices/2014-12-01.asp#29>

# Problems with Express Entry

- As of July 6, 2015 – EE statistics are as follows:
- 112,701 people have applied for Express Entry
- 12,017 have received Invitations to Apply
- 7,528 have submitted the Electronic Application for Express Entry (60 days post ITA)
- 655 applicants have been approved
- 844 Confirmation of Permanent Residence have been issued
- **Only 411 applicants have been landed since January 1, 2015**
- **Annual government target is 68,000 to 74,000 (not including PNP)**

# Problems with Express Entry

## Technology Issues:

- Many applicants will face technological problems that they will not know how to overcome
- In some circumstances the problems will prevent the applicant from submitting the application at all because the applicant will not be able to move the application forward

# Problems with Express Entry

## Technology Issues:

- In other circumstances the technology bugs will appear, but the applicant will still be able to submit the application
- However, if they do not address the issues – their application will be refused down the line and they will have to begin all over, thereby losing several months

# Problems with Express Entry

## Types of technology problems that exist:

- The portal will automatically log you out after a period of time
- Information will automatically erase itself
- Information will not always transfer over correctly from the profile application to the ITA questionnaires to the document checklist
  - For example: in the ITA questionnaire you can list all the children you have and in the child's individual sections the prefilled information that has been locked by CIC may only have the information for 1 of children instead of all 4 - how does the applicant get around this and still provide accurate information?

# Problems with Express Entry

## Types of technology problems that exist:

- There are situations where the letter of explanation for the main applicant does not appear
- The document checklist sometimes incorrectly labels and populates the wrong employment records that are required for upload
- The document checklist sometimes populates required documents to be provided and if you log out/back in or use a different internet platform (google chrome instead of internet explorer), this problem may correct itself

# Problems with Express Entry

## Types of technology problems that exist:

- In the profile stage – applicants who on paper meet the 67 points for FSW on the online system may not meet the criteria in the portal
- Open bridging work permits are not issued to bridge expiring work permits during this PR process as EE is supposed to be completed within 6 months – but applicants may lose their status while they wait for their PR application to be processed
- Applicants who are not including their spouse in the application (perhaps Canadian citizen spouse or unaccompanying spouse) still must provide documentation for their spouse

# Problems with Express Entry

## Types of technology problems that exist:

- Applicants who are currently working in Canada may naturally assume they have a qualified job offer – but if they do not have the LMIA or a PNP – EE nomination their application will be refused as they do not really have the 600 points
- Applicants who do not meet the strict requirements in a job offer letter, or reference letter may have their application refused
- Applicants who do not provide police certificates or proof of applying will have their applications refused (New Zealand Police Certificate is very problematic)

# Problems with Express Entry

## Types of technology problems that exist:

- When applicants have successfully submitted their application for PR CIC will contact them through the portal for updates on their account
- Problems occur sometimes when CIC makes a request well after the date of the CIC letter. For example: the request was emailed to the client on August 25, 2015 and the letter was dated August 13, 2015 the due date was 7 days i.e. August 20, 2015. CIC will refuse the application – what do you do?
- Sometimes there is no email received from CIC and the application is cancelled with no notice whatsoever

# Problems with Express Entry

## Types of technology problems that exist:

- As Express Entry is an automated system, the CIC call centre will not be able to provide assistance
- CIC will re-direct applicants to submit a case specific enquiry by email to EE
- Case specific enquiries often are not responded to in a timely manner and the applicant's 60 days post ITA may expire
- After submitting the Permanent Residence Application – case specific inquiry may not be able to assist

# Problems with Express Entry

Immigration lawyers understand all of these problems and have learned methods to assist in order to overcome these hurdles – ensuring compliance is met and the applicant is not misrepresenting the information as a result of technology glitches

# TRANSITION FROM TEMPORARY TO PERMANENT

# Transition from Temporary to Permanent Status

- Hiring a temporary foreign work (TFW) is an investment
- An evaluation of whether they want to become Permanent Residents should take place either before or shortly after they arrive in Canada
- If the TFW has been in Canada for sometime already, it is important to ASK!

## Transition from Temporary to Permanent Status

- If the applicant is on an LMIA – as soon as they land in Canada and obtain a work permit they should be considering applying for Permanent Residency as they will automatically be given the 600 points for Express Entry
- The applicant must submit their application for Permanent Residence before their LMIA expires!! It is better to do it early to avoid any unforeseen complications

## Transition from Temporary to Permanent Status

- If the applicant has a post grad work permit, they should build their express entry profile as they may qualify under FSW or CEC
- As well they will receive additional points because there are Canadian educated
- They may not be selected right away and will need to apply to the Canadian Job Bank, but they may still be eligible

## Transition from Temporary to Permanent Status

- If the applicant is here because of Intra-company Transfer or through NAFTA (North American Free Trade Agreement) - these applicants most likely are foreign educated, have foreign qualifications and experience
- They may or may not rank high enough in Express Entry
- Express Entry looks at Human Capital Factors (age, language, education, Canadian experience )

## Transition from Temporary to Permanent Status

- Applicants should still create the profile, however, they will be required to apply to the Canadian Job Bank and try to find an employer who will provide them with an LMIA
- If they are lucky, they may be selected if the points decrease and they will need to know how to raise their profile points (example rewriting English tests, having their education assessed)

# Transition from Temporary to Permanent Status

- For very high skilled workers that have been brought in by way of NAFTA and are acting as CEO's, CFO's, COO's – obtaining LMIA's for them is difficult as the details of their position are being posted – and they are in the role currently
- shareholders and stakeholders sometimes do not understand the need for the LMIA
- They should still be encouraged to apply for Express Entry

## Transition from Temporary to Permanent Status

- Many times, junior highly skilled applicants that have an LMIA, or a Trades Person, will be granted an ITA before a CEO, CFO, or a COO only because they have an LMIA
- Immigration Lawyers are trained to assist in these unique situations and to look for other ways to obtain Permanent Residency for those without an LMIA

# **EXPRESS ENTRY FACT PATTERNS**

## **Case Study #1**

# Fact Pattern #1

- A Canadian company currently employs an American Engineer from its sister company in the United States – a NAFTA Intra Company Transferee. Candidate has been working with the Canadian company for 5 years now and was with the US company for 1 year.
- The candidate is 28 years old, single, has a Bachelors degree in Chemical Engineering and a Master's degree in Petroleum Engineering. He speaks English and has working knowledge of French and received 8.5 on all language tests

# Fact Pattern #1

- **How many points would he be allocated?**

\*single status

<b>Age</b>	<b>110 points</b>
Education	135 points
Language	104 points
Canadian Work Experience	80 points
Skill Transferability	50 points
Labour Market Impact Assessment	0 points
<b>Total points awarded</b>	<b>479</b>

## Fact Pattern #2

- Given the same fact pattern, **however, the Canadian company has now been able to secure a LMIA for employee**
- How does that reflect in the applicant's score?

Age	110 points
Education	135 points
Language	104 points
Canadian Work Experience	80 points
Skill Transferability	50 points
Labour Market Impact Assessment	600 points
Total points awarded	<b>1079</b>

# / PART VII

## SUMMARY AND FINAL POINTS

# Summary and Final Points

- CIC has posted on the website that “potential candidates are not required to hire an immigration representative to participate in Express Entry”
- This is certainly true – but of the first 9,000 applications submitted to Express Entry since launching – 6,000 were returned as incomplete or incorrect
- The government has said they have made it very easy and its all online etc. but clearly expertise is required to ensure a complete application, given the very high refusal rate

# Summary and Final Points

## The potential impact to accompanying dependent children:

- Given CIC's recent change in the definition of dependent child **from a child under 22 to a child under 19**, the impact of waiting for an ITA could be devastating for families and family unification as the child ages out as an accompanying dependent
- An application for Express Entry is not "locked-in" until the ITA has been received and the application submitted and accepted
- Waiting up to one year or longer for an ITA could lead to significant age-out issues for accompanying dependent children

# Summary and Final Points

## What Options If No ITA Received?

- Maintain valid work permit at all times
- Obtain LMIA to obtain additional 600 points and to maintain valid status in Canada
- Apply for PNP for your province if they continue to have a non Express Entry portion of the PNP program
- Is Family Class PR an option?

# Summary and Final Points

- Express Entry is going to develop and emerge over the next year as it works through some of the challenges and issues raised by immigration lawyers nationally
- It's important to stay up to date by checking the CIC website regularly and on the status of your portal if you have been admitted into the pool
- You must continually update your portal if anything changes in your circumstances to ensure it is fully up to date and there is no misrepresentation

# Summary and Final Points

- As Legal Counsel, it is vitally important that you ensure you are reviewing the most recent immigration policy or that you seek out expertise
- The risks to your employee(s) are significant if there is anything missing in the application or there is misrepresentation

# ACKAH BUSINESS IMMIGRATION LAW

- We provide the highest quality immigration legal services to assist employers and applicants:
  - **Temporary Status** – Work Permits, Study Permits, Visas, LMIA, Intra-company transfers, NAFTA, GATS, Spousal Work Permits, Rehabilitation, Restoration of Status, NAFTA Work Permits (B1, L1, E, O, P)
  - **Permanent Status** – Express Entry PR, Live in Caregiver PR, Canadian Citizenship, US Green Card and US Citizenship

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THANK YOU!/QUESTIONS?

# / Evelyn Ackah



For Questions or Assistance Please Contact:

## **Ackah Business Immigration Law**

Evelyn L. Ackah

Founder & Managing Lawyer

(403) 452-9515 ext. 100

[evelyn@ackahlaw.com](mailto:evelyn@ackahlaw.com)

[www.ackahlaw.com](http://www.ackahlaw.com)

**ACK**

**Ackah** / BUSINESS IMMIGRATION LAW