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**THE
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News

Headline Article

Immigration minister eases entry criteria
Lawyers hope ministry has capability to deal with backlog

By David Gambrell

Citizenship and Immigration Canada is changing its criteria to make it easier to attract skilled workers to Canada. It will also scrap the retroactive application of the new Immigration and Refugee Protection Act (IRPA) to more than 100,000 skilled workers who applied to come to Canada before Jan. 1, 2002.

The retroactive application of the IRPA and its high pass marks for skilled workers represented thorns in the side of immigration lawyers for more than a year. Many say the IRPA led to a substantial decline in skilled worker applications.

Immigration lawyers are pleased by the Sept. 18 announcement lowering the pass mark for skilled workers from 75 to 67, saying the government appears to have reacted to their concerns.

"The positive is, we've opened up our doors to the people to whom we were supposed to open our doors - skilled individuals who will make a difference in Canada," said immigration lawyer David Garson of Guberman Garson in Toronto.

At the same time, Garson and others wonder whether the government will commit financial and/or administrative resources to clear up the problem of backlogged applications. Such backlogs led the government to introduce inflated pass mark retroactivity in the first place, immigration lawyers say.

"The question is that by lowering the pass mark, obviously the doors of the skill program for immigration purposes are opened a little bit wider than before," said immigration lawyer Sergio Karas of Karas & Associates. "However, neither the department nor the minister are in any position to commit the necessary resources with the increased number of applications.

"So how meaningful is it to encourage people to file an application and then me wait for three or four years? That doesn't make any sense to me."

The government implemented the IRPA on June 28, 2002. The legislation created a points system to be applied for assessing skilled workers applying to Canada.



David G. Garson says the federal government put more money into the program, but there is still a built-up backlog.

Under the new system, skilled workers needed a pass mark of 75 out of a possible 110 points - based on criteria including education, experience, language proficiency, arranged employment, and adaptability - in order to be considered for entry into Canada. Under the old system, skilled workers needed 70 out of a possible 110 points.

Immigration lawyers said the number of skilled worker applications nose-dived after the IRPA. Some talked about getting out of the business altogether, saying the government's new point system was unfair to skilled worker applicants.

Denis Coderre, the minister of Citizenship and Immigration Canada (CIC), said the government changed the pass mark to 67 out of 100 after listening to the views of various stakeholders. "I said when the IRPA was initially implemented that we would closely monitor the pass mark and adjust it to better match our needs," Coderre announced. "This is what we are now doing."

The government also announced it would not retroactively apply the new IRPA grid to about 100,000 skilled workers who applied to come into Canada before 2002. The announcement followed a Federal Court of Canada decision in February that called on the government to process pre-Jan. 1, 2002 applications according to the grid pre-dating the IRPA.

In June, a federal court judge imposed an injunction on CIC, preventing the department from finally refusing any application filed before Jan. 1, 2002.

"In terms of retroactivity, the litigation that was going on I think forced their hands and brought them to this position," said Toronto immigration lawyer Benjamin Krause. "I'm thankful that someone was taking on that litigation."

"I think, frankly, besides any technical legal arguments, it was the fair thing [to do]. People were caught in a system and it suddenly changed on them. It was that that I recall in immigration practice that they had used retroactivity that way."

Janet Bomza of Bomza & Associates is among several immigration lawyers with the lingering threat of retroactivity.

"I imagine there is a bit of mistrust out there . . . because although they have reduced the pass mark to 67, Parliament still legislated retroactivity and it's still part of the IRPA scheme," said Bomza. "What that means is that at any point, the next minister could come in and increase the pass mark if they so choose."

"Maybe some lawyers are approaching [Coderre's announcement] with a little bit of trepidation, given the uncertainty that is now part of our new law."

Initially, CIC department officials applied retroactivity - and the new high pass mark - to clear up a backlog of skilled worker applications. Immigration lawyers are still concerned about the backlog situation; they wonder whether making it easier for skilled workers to apply will simply make the existing backlog situation worse.

"The consulates are still grappling with massive backlogs," said Garson. "So not only will more people qualify, the CIC's [application] numbers will go up, and they'll have to process them."

again. The waiting period will increase and the same amount of people, more or less, will still come [to Canada], because that's the only amount [the CIC] can process even now. So, whoo hoo!

"Unless they put more funding into the system - and I don't know where they are going to get the money to do that - I'm not sure where they are going to find the money to pay for the people that they've lowered the points to bring in."

All the same, many lawyers report receiving phone calls from potential clients as a result of Coderre's announcement. Also, lawyers are trying to contact past clients who were turned away under the IRPA points grid but who may qualify under the new pass mark. All in all, it's led to a yo-yo kind of practice for immigration lawyers.

"I think [they] must make sure they've got pretty solid clients' agreements prepared that they address the potential changes in pass marks," said Bomza of the Ontario Bar Association. "You have to be much more cautious about how you represent yourself and the interests of your clients."

Karas said the government should exercise the same amount of caution when re-opening the system to potential applicants.

"The government should have a policy of honesty in advertising," he said. "The government should just tell the people: 'I'm sorry [about the delays], but maybe there is a way that you can be admitted on a temporary permit while their final visa is being processed.'"

While the bar is generally happy about the anticipated increase in business, some do have a concern that any impending increase in business for immigration lawyers might be offset by a parallel increase in business for unlicensed immigration consultants.

"Let's not forget [the high pass mark of 75] made it much more difficult for unlicensed consultants to prey on people," said Garson. "Now, with lowering the points to a lower extent, you're going to have a lot of these consultants coming out of the woodwork making all sorts of outlandish promises, taking people's money, and not representing them properly."