

Changing rules for 'specialized knowledge'

CIC clarifies immigration criteria in response to concerns about inconsistencies

BY SERGIO KARAS

Multinational employers that wish to transfer certain types of employees for assignments in Canada can usually take advantage of provisions related to intra-company transferees.

The Immigration and Refugee Protection Act (IRPA) regulations provide an exemption from a Labour Market Opinion (LMO) for senior managers, executives and specialized knowledge workers transferred between branches, divisions or subsidiaries of companies under common control.

The intra-company transferee category was created so international companies could temporarily transfer qualified employees to Canada to improve management effectiveness, expand Canadian exports and enhance the competitiveness of Canadian entities in overseas markets.

The IRPA regulations allow for the entry of intra-company transferees, in addition to the North American Free Trade Agreement (NAFTA) and other international treaties that contain similar provisions.

"Specialized knowledge" is a very high level of knowledge of a product or service or an advanced level of knowledge or expertise in an organization's processes and procedures. In some cases, individuals with specialized knowledge have been instrumental in creating or developing a specific product, software or process and, in others, they may have intimate knowledge of a company's international operations.

Prior to the end of 2010, many individuals who did not necessarily qualify as specialized knowledge workers could still receive work permits exempt from a LMO under other programs, such as the Information Technology Workers Program (which

was recently discontinued).

With some of the programs cancelled by Citizenship and Immigration Canada (CIC), many workers sought to enter under the specialized knowledge category but were unsuccessful. Many did not have the required qualifications or experience, or earn an appropriate level salary.

In response to concerns about inconsistency in the decision-making process, CIC recently published *Operational Bulletin 316* summarizing the criteria to be followed by decision-makers when assessing specialized knowledge applicants. Officers must assess a number of factors, including:

Education: Possessing a degree, diploma or certificate relevant to the occupation may be a good indication an employee possesses the appropriate level of knowledge and training. However, many workers have hands-on experience but do not necessarily have a degree.

Knowledge: Individuals with knowledge that is unusual and different from that generally found in a particular industry may possess specialized knowledge, particularly when they occupy critical positions. The knowledge may not be proprietary but if it relates to a patented product or process, it can also be a good indicator of specialized knowledge. As a general rule, specialized knowledge may mean thorough and intimate familiarity with a product, process or service that no other company makes or that other companies make differently.

Similarly, an applicant could have knowledge of a complex, unusual business process or method of operation that cannot be easily transferred to another individual in the short term. Specialized knowledge is normally gained through experience and used by an individual to contribute significantly to an employer's productivity or

well-being.

Workers who have specialized knowledge:

- possess knowledge valuable to an employer's competitiveness
- are uniquely qualified to contribute to a Canadian employer's knowledge of foreign operating conditions
- gained knowledge through extensive prior experience with an employer
- were previously used abroad in significant assignments that enhanced an employer's productivity, competitiveness, image or financial position.

The test to be applied is whether an applicant possesses such knowledge and not whether it exists in Canada.

Advanced or high-level knowledge is complex. It is not necessarily unique or known by only a few individuals — or even proprietary — but it requires a specific background or extensive experience with an employer that is transferring the worker, or experience from within the same industry. The person may possess key knowledge that enables her to contribute to a Canadian office's ability to operate competitively.

Experience: The number of years of experience a person possesses in a specialized field is a good indicator of specialized knowledge. The experience need not be with the same employer but can be within the same industry. In some cases, however, a foreign worker may only have one year of experience with a company or in an industry but may have a considerable wealth of knowledge. Studies in a relevant area can also be a substitute for experience.

Salary: In some cases, employees who may possess specialized knowledge but are not sufficiently senior are not highly compensated. In addition, current economic

conditions have resulted in many specialized employees not being able to command high salaries. Salary can indicate if an employee possesses specialized knowledge but it should not be considered in isolation.

Relevant training: Many candidates do not have degrees but possess in-house or industry training that may be very difficult to impart outside of their specialty.

Supporting documentation: Do the resumé, reference letters and other documents support the claim? All applications should be thoroughly documented, given the in-

creasing scrutiny.

Officers have been told to determine whether the occupation level in the parent company is similar to that in the position sought by the specialized knowledge worker in Canada.

Salaries must be realistic in terms of Canadian wage levels. A low salary may be a red flag. Non-cash allowances or per diems such as hotel and transportation are not to be included in the calculation of the overall salary. Further, officers are directed to compare salaries against the Human Resources

and Skills Development Canada (HRSDC) guide, which contains the average salaries for a specified geographical location (www.workingincanada.gc.ca).

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