

Immigration

New immigration ministerial authority cause for concern | Sergio R. Karas

By **Sergio R. Karas**

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(July 4, 2022, 10:03 AM EDT) -- Express entry is an online system that the federal government uses to select immigrants with skilled work experience to apply for permanent residency. Applicants submit their profiles, and they are ranked in the Express Entry pool using the Comprehensive Ranking System (CRS). Invitations to apply for residency are issued to candidates with the highest scores in the pool after each draw and that may include those with Canadian experience and those selected under provincial programs. The CRS rewards applicants who are younger, have graduated from Canadian educational institutions, and have Canadian work experience, with more points in recognition of their adaptability to the labour force.

Immigration, Refugees and Citizenship Canada (IRCC) proposed an amendment to the Express Entry system in Bill C-19 which received royal assent on June 23, 2022. This is an Act to implement certain provisions of the budget tabled in Parliament. The new provisions amend the *Immigration and Refugee Protection Act* (IRPA) and allow the minister of citizenship and immigration to publish instructions establishing categories of foreign nationals to be selected for permanent residence based on labour market needs and government economic goals. Previously, the minister had no authority to select specific applicants based on their occupation, as those with the highest scores were usually selected.

This amendment raises significant concerns about the transparency and predictability of the system. The minister now has the authority to select a group of foreign nationals for permanent residency based on ministerial instructions. The minister may consult various employer groups, stakeholders and Employment and Social Development Canada (ESDC) to select classes of applicants. However, it is unclear what data will be used in that determination. Further, it is unclear how regional labour market disparities will be addressed considering mobility rights.

The amendment also brings uncertainty. It would be unfair for the minister to select groups of industries that he favours for political purposes. This opens the door for heavy lobbying by industry groups that have a stake in increasing the labour pool in specific occupations, increasing labour supply and depressing wages through heavy competition.

It is also unclear what factors will be used to determine which applicants should be invited. Applicants were typically required to obtain a CRS score of more than 450 points to be invited to apply for residency. However, with the new amendment the minister may now choose to select applicants based on their occupation depending on labour market shortages, based on work experience, or even language ability. This will create an unfair opportunity for those who do not possess the requisite skills to the detriment of more qualified applicants with a higher score. These applicants may have to wait much longer to be selected, or even wait indefinitely. This creates a lack of predictability, making it difficult for immigration professionals to advise applicants on a timeline for an invitation through the system.

Currently, most areas of employment are facing labour shortages. Many employers are willing to hire workers without direct experience or those who do not have a degree or certification. Employers may prefer to offer on-the-job training to new workers instead of having to spend considerable time

looking for those with relevant experience. Research conducted by research company CensusWide for the job site Indeed, found that the hardest jobs to fill include those in engineering, software development and coding skills. If the minister invites applicants from one group out of hundreds, this will force the rest of the labour market to hire more employees without experience.

By consulting employer groups, stakeholders and the ESDC and selecting candidates based on economic goals that the minister seeks to support, the selection of immigrants may become politicized and may lead to heavy lobbying by interest groups. The ministerial interference with the process smacks of authoritarian central planning. Labour markets in Canada are primarily local, and Canadians are not as mobile as Americans when seeking jobs. It is also conceivable that in the current political environment, the minister may seek to influence the type of positions selected for residence with a heavy emphasis on "green jobs" to the detriment of natural resources industries, even though Canada still derives considerable tax revenue from that sector. It is not a secret that the prime minister has not been a big fan of the oil and gas industry, and progressive forces are constantly increasing pressure on the Liberal government to reduce oil and gas exploration and drilling.

It would be best for the government to stop interfering with the employment process and to instead continue to use the CRS to rank applicants and invite them for permanent residency based on their qualifications and experience. The CRS system ensures that applicants are selected fairly, from all groups and provides some certainty for those who meet the requirements for selection.

Instead of trying to tamper with market forces, an alternative solution to supporting the labour market could include improving the Labour Market Impact Assessment (LMIA). Currently, employers are required to advertise the position in Canada for a minimum of 30 days to find Canadians or permanent residents to fill a position before applying to hire foreign nationals. It would be beneficial to shorten the advertising period to 15 days. This will allow employers to hire workers with experience and certifications required for the job as quickly as possible. Reducing application fees for LMIA from the current \$1,000 per applicant and onerous over-regulation would also be a step in the right direction.

It would be more effective to continue to use the CRS scores to assess applicants for permanent residency without ministerial instructions that create uncertainty for applicants and for their counsel. Employers should be able to find workers without the government attempting to engage in social engineering. Interference with market forces is usually a recipe for failure and creates market distortions. We should let employers control the hiring process and train workers that they think are best for their business on a temporary basis, and then support them for residency if they think they are a good fit for the future. Granting permanent residency based on political goals is bad policy and creates fertile ground for lobbyists and interest groups.

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