Expanded Guidelines For Work Permits For Intra-Company Transferees With Specialized Knowledge

A primary objective of the Federal Government's 2012-2013 Economic Action Plan is ensuring that employers first look to the domestic labour force prior to seeking Temporary Foreign Workers (TFWs) to fill temporary labour shortages. The TFW program features a LMO-exempt component, which allows the granting of work permits without the labour market test.

One such LMO-exempt category is Intra-Company Transferees (ICTs). The Government has developed a series of set categories of ICTs which allow international companies to enhance competitiveness in overseas markets. One of the categories that has been set is "Specialized Knowledge ICTs".

On June 9, 2014, the Government of Canada released expanded guidelines, effective immediately, for assessing work permit applications under the ICT Specialized Knowledge category. The assessment criteria has been modified to include a more exacting definition of "specialized knowledge". There are also new mandatory wage requirements for some ICTs (excluding those entering Canada pursuant to the North American Free Trade Agreement or any future or current Free Trade Agreements).

To qualify under the Specialized Knowledge category, a worker must possess "knowledge at an advanced level of expertise" as well as "proprietary knowledge of the company's product, service, research, equipment, techniques or management". The onus is on the applicant to show, on a balance of probabilities, "a high degree of both proprietary knowledge and advanced expertise." The applicant may satisfy this requirement through the use of documentary evidence, which may include, but is not limited to: a resume, reference letters, letter of support from the company, job descriptions that outline the level of training acquired, years of experience in the field, degrees or certifications obtained in the field, list of publications and awards (if applicable), and a detailed description of the work to be done in Canada.

Proprietary knowledge is defined as company-specific expertise related to a company's product or services. In order for an applicant to demonstrate an advanced level of proprietary knowledge, they must be able to prove one or both of the following:

- Uncommon knowledge of the host firm's products or services and its application in international markets; or

- An advanced level of expertise or knowledge of the enterprise’s processes and procedures such as its production, research, equipment, techniques or management.

Proprietary knowledge alone is not sufficient. The applicant must also demonstrate an advanced level of expertise. This requires specialized knowledge gained through significant and recent experience with the organization and used by the individual to contribute significantly to the employer’s productivity.

Citizenship and Immigration Canada (“CIC”) defines specialized knowledge to be knowledge that is both unique and uncommon. Therefore, by definition, it may only be held by a small percentage of employees in a given firm. It is crucial for specialized knowledge workers to therefore demonstrate that they are “key personnel” within the firm, not merely highly skilled workers.

Should it be determined that the worker possesses the high standard of specialized knowledge that is uncommon in a particular industry, as described above, the salary or wage paid to said worker should be consistent with such a specialist. Usually, a specialized worker would receive an above average salary. As such, a wage floor set at prevailing wage levels will be used to establish a baseline for the assessment of the application. It is important to note that non-cash per diems (such as hotels or transportations that are paid for by the employer) are not included in the calculation of the overall salary or wage. Only monetary compensation paid directly to the employee are included.

An employer that is considering applying for an employee under the Specialized Knowledge category should ensure that the applicant can qualify under the new assessment criteria. For more details regarding these guidelines, and clarification with regards to the requirements, the CIC Operational Bulletin can be found here.

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