

## WORKING YOUR WAY INTO CANADA—2013 UPDATE

PAPER 3.4

# Long Term Challenges—4 Year Cumulative Duration

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## LONG TERM CHALLENGES—4 YEAR CUMULATIVE DURATION

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When CIC announced changes to the Immigration and Refugee Protection Regulations<sup>1</sup> (“Regulations”) that came into effect on April 1, 2011, the four year maximum cumulative duration (four year CD) was introduced in R200(3)(g)(i) for foreign workers who would then be forced to leave Canada for a minimum of four years (48 months) before being eligible to return to Canada as foreign workers. At the time, there were also many exceptions outlined to the four year CD which brought peace of mind as it really only seemed to apply to LMO based NOC B, C and D level workers. In those cases, there was also the further exception of certain permanent resident (“PR”) applicants who could be exempted from the four year cap if their PR applications were given positive assessments or approvals in principle.

When OB 523<sup>2</sup> was published on May 22, 2013, the guidelines in the bulletin clarified to whom and when the exceptions to the four year CD would apply. The analysis was certainly surprising as many foreign workers who were initially thought to be exempt for their time working in Canada were no longer necessarily going to fall within the exceptions. With only 19 months remaining until April 1, 2015, practitioners will certainly need to remind their clients that the 4 year CD date for those who have been working in Canada since April 1, 2011, is fast approaching. So who is really affected by the 4 year CD? This paper will attempt to provide an analysis of the 4 year CD application and cover some of the main issues that practitioners may come across on their files.

### I. All Work Counts

The explanation in OB 523 which was most surprising was the statement that “all work counts” regardless of the work permit type and category when calculating the duration of work experience in Canada. This includes all NOC levels, all types of work whether it is volunteer work, self-employed work, working while having

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1 Immigration and Refugee Protection Regulations, SOR/2002-227.

2 Operational Bulletin 523 – May 22, 2013 Temporary Foreign Worker Program – Four Year Maximum (Cumulative Duration). Copy attached as Appendix to this paper.

implied status, any work performed while holding any type of work permit and even work that did not require a work permit. The only concrete exemption from the “all work counts” rule is the work performed by a foreign national who is in Canada authorized to study on a full-time basis.

## II. Exceptions

As announced with the April 1, 2011 amendments, there are exceptions when calculating the four year CD as set out in the Regulations. The main exceptions include the following:

R200(3)(g)(ii)—the foreign national intends to perform work that would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents

R200(3)(g)(iii)—the foreign national intends to perform work pursuant to an international agreement between Canada and one or more countries, including an agreement concerning seasonal agricultural workers

R200(4)—A period of work in Canada by a foreign national shall not be included in the calculation of the four-year period referred to in s. (3)(g) if the work was performed during a period in which the foreign national was authorized to study on a full-time basis in Canada.

The exceptions outlined in the above noted Regulations are flushed out in Appendix B of OB 523 to include the following:

- Positions that are NOC 0 or A level positions.
- LMO exempt positions under:
  - International Agreements (R204 (a) and (b)) including NAFTA,
  - Canadian interests (R205),<sup>3</sup>
  - Self-support (R206), and
  - Humanitarian reasons (R208).
- Seasonal agricultural workers.
- Those working under R186 with or without a visitor record (for example: clergy. Please note, however, if the foreign worker is eligible to work under R186 but requests a work permit, then the four year CD will be assessed and the foreign worker will not be able to exceed the four year maximum unless the foreign worker is able to apply an exception).
- Those who have applied for permanent residence and received a positive selection decision or approval in principle (PR categories include a provincial nominee program, live-in caregiver class, Federal Skilled worker, Canadian Experience Class. It appears that other PR classes such as the Federal Skilled Trades Class would also apply.)

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3 Although open spousal work permits are considered to be under Canadian interests, only spouses of NOC level 0 or A will be considered excepted from the 4 year CD. As such, spouses of NOC B level foreign workers will not be able to apply for further open spousal work permits after they have reached the four year CD (see Appendix B of OB 523).

### III. Exceptions Only Applied at Time of Application

OB 523 sets out that the exceptions outlined in the Regulations only apply to the four year CD *at the time of application* for a further work permit. Therefore, while there are several exceptions to the four year cap, because “all work counts,” all work experience starting from April 1, 2011 is to be counted and if at the time of an application for a further work permit the foreign worker falls within an exception then a further work permit will be issued. If, however, at the time of application the foreign worker no longer falls within an exception, then the four year CD will be assessed on all work experience since April 1, 2011. If at the time of application the foreign worker does not fall within an exception and the foreign worker has worked in Canada for four years, a further work permit will *not* be issued.

This clarification in OB 523 was surprising as it was previously believed that the exceptions would buy clients more time. It was generally thought that if a foreign worker was working in Canada under one of the exceptions outlined in the Regulations that the time worked under the exempted category would not apply to the four year CD. However, as “all work counts” and the exceptions only apply at the point in time when a work permit application is made, a more careful analysis of each foreign work permit application must be made.

#### A. Examples

OB523 sets out a few clear examples, however, it might be best to review a couple of basic scenarios to understand the application of the four year CD:

Scenario 1: George Curious, a Graphic Designer (NOC 5241) from the US, comes to Canada to work for a digital effects company in BC and receives a NAFTA Professional work permit for three years starting April 1, 2011. After three years, George Curious decides to work for a different digital effects company in Vancouver and that company applies for and receives a two year LMO in support of Mr. Curious’ work permit application (NOC 5241) in March 2013. As Mr. Curious is applying for a NOC B level LMO based work permit, he does not qualify for an exception at the time of his new work experience and therefore all of his work experience in Canada counts towards the four year CD. As a result, he will only be issued a further one year work permit.

Scenario 2: Michael Highlander, a UK citizen, has worked in Canada as a Heavy Duty Technician for Toyota since June 1, 2010. On July 1, 2013, he was promoted and Toyota applied for and received a three year LMO for Michael to work as the Manager of the technical service department. Michael applies for a three year work permit and because at the time of his work permit application, he falls within an exception (NOC 0 level position), the work permit is issued for an additional three years.

As April 1, 2015 is only 19 months away from the time of this CLE conference, one must first evaluate the duration a foreign worker has already been in Canada. It will then be imperative to determine whether a work permit application for a foreign worker falls within an exception and whether a work permit for longer than 19 months can be made at this time.

### IV. Calculating the Four Year Cumulative Duration

Similar to the “re-capturing time” policy allowed for intra-company transfers who can re-capture time that was not spent working in Canada during the five year (specialized knowledge) or seven year (managers and executives) cap, the four year CD also allows for *gaps in employment* of at least *one consecutive month or more* to be considered outside of the four year CD. Possible proof of such gaps can include passport stamps, records of employment showing end of employment, proof of maternity/parental leave, letter from a doctor confirming medical leave which was not covered by contract terms, to name a few examples. The onus will be on the foreign worker to provide proof of the valid gaps in employment at the time of the work permit application. The valid gaps in time will then be subtracted from the four year CD in determining how long the work permit can be issued.

## V. Re-Setting the Four Year Clock

In order for the four year clock to be re-set to zero, the foreign worker must leave Canada for a *minimum* of four years before being eligible for another four years of work in Canada or have valid status in Canada as a student or visitor. If the foreign worker does not leave Canada for a minimum of four years (or change their status), the clock will not be re-set upon their return to Canada and the four year CD will continue to apply. For example, if a foreign worker works in Canada for three years and leaves Canada for two years, he/she will only be permitted to return to Canada to work for another one year under the four year CD. After that one year, he/she would have to leave Canada for another four years before being eligible to work in Canada. This rule would apply even if the foreign worker had left Canada for three years and 11 months and returned to Canada, he/she would still only be eligible for an additional one year work permit and would again be required to leave for four years before having the clock re-set to zero.

## VI. Planning Ahead

In many circumstances, it has become more critical than ever for our clients to create a timeline for applying for permanent resident status. As PR applications do take many months (if not years) to process, clients who wish to stay in Canada permanently should consider their PR options soon after arriving in Canada. With the four year CD, those foreign workers generally in NOC level B, C and D positions need to examine if there is a permanent resident category that they would be eligible for and start working towards that category. That does not mean that those holding NOC 0 and A level positions should delay in their PR applications as circumstances can certainly change and if a foreign worker who was originally in a NOC 0 or A position is transitioned to a NOC B level position, at the time of his/her work permit renewal, the four year CD could come into play.

For low skilled workers, often the only avenue for PR status is through a PNP program; therefore if English or French is not their first language, a focus on language courses upon arrival to Canada may be necessary. If PNP is not an option for the low skilled worker because of the industry he/she works in, perhaps a career plan to try to advance to a NOC level B position within a year or two should be examined. Planning is important as the Canadian Experience Class requires one full year (52 weeks) of full-time work experience (minimum 30 hours per week) in a NOC level 0, A or B position to qualify.

Those with NOC level B positions working toward the CEC will need to consider language exam criteria as well. If an applicant's English or French language skills are not as strong, be sure to apply for CEC with 1 year of NOC level B experience (as the language benchmark is lower for NOC level B), even if they are promoted to a NOC 0 or A level position. In addition, with OB 523 stipulating that only spouses of NOC 0 or A positions (even those who are within an LMO exempt category) would be eligible to apply for further open spousal work permits, although foreign workers working as intra-company transfers with specialized knowledge or NAFTA professional work permits that are at a NOC B level<sup>4</sup> may be permitted to work in Canada beyond the four year CD, their spouses will not. This can seriously impact a family's economic ability to stay in Canada as the spouse will not be able to work until PR approval in principle is received.

With the introduction of the new Federal Skilled Trades category, many workers holding trades positions which are NOC B level, may be eligible to apply under this class for permanent residence. Although the Federal Skilled Trades Class was announced after the initial four year CD announcement, OB 523 seems to imply this class of PR would be excepted with the other PR categories. OB 523 refers to exceptions including "PR applicants who have received a positive selection decision or approval in principle in the PR category they have applied" as an exception from the four year CD.

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4 Please note that not all NAFTA Professionals have NOC Codes that are NOC level 0 or A. Please see the attached Appendix for details.

### 3.4.5

The focus on Immigration Canada to keep the temporary foreign worker program “temporary” has materialized with the four year CD. Although the policy itself seems reasonable to ensure that those who are here for “temporary purpose” leave Canada after four years and those who wish to transition to permanent status apply for PR in a timely fashion, it is difficult for clients when the timing of PR applications is in the hands of the government. Although there are provisions for 12 month open work permits for those who have received approvals in principle or acknowledgement letters/emails for certain PR applications, it is important for foreign workers to plan how they will transition to PR status within the first two years of arriving in Canada in order to avoid having to leave Canada at the four year mark.

## VII. Appendix A—Operational Bulletin 523: Temporary Foreign Worker Program—Four-Year Maximum (Cumulative Duration)

Operational Bulletin 523 – May 22, 2013

### Temporary Foreign Worker Program – Four-Year Maximum (Cumulative Duration)

#### Purpose

The purpose of this Operational Bulletin is to provide operational guidelines to officers processing work permits, and information to employers and foreign nationals (FNs) either currently working in Canada or considering coming to Canada to work temporarily, about the Cumulative Duration (4-year maximum) regulation that came into effect April 1, 2011, and which we expect to begin impacting applicants in spring 2013.

#### Background

The Temporary Foreign Worker Program (TFWP) was established to address *temporary* labour and skills shortages in Canada. To prevent FNs who are working temporarily in Canada from losing ties with their country of origin due to prolonged periods of stay in Canada, and to encourage workers and employers to explore appropriate pathways to permanent residence, this regulation – [R200\(3\)\(g\) under the Immigration and Refugee Protection Regulations](#) – establishes a maximum duration that a TFW can work in Canada.

It states that a work permit (WP) should not be issued when “the individual has worked in Canada for one or more periods totalling four years.”

Generally, once a FN has accumulated four (4) years of work, he or she will be ineligible to work in Canada again until a period of four (4) years has elapsed.

#### Important Note:

When issuing a work permit, processing officers will issue for a duration that brings the applicant to – but does not exceed – the four-year maximum (unless the occupation falls into one of the exception categories – see ‘Exceptions’ below).

#### *Example:*

*Since April 1, 2011, a TFW has accumulated three years of work in Canada, and is now applying for a two-year work permit in an occupation that is not listed in the ‘exceptions’. The work permit would only be issued for one year.*

#### All work counts (see [Appendix B](#), Types A and B)

All work performed in Canada since April 1, 2011 — regardless of whether or not it was authorized by a work permit or exempt under [R186](#) — counts towards a TFW’s four-year total. This includes work done as a volunteer or as a self-employed individual, work in all occupations falling under all categories in the National Occupation Code (NOC) list, work done while under implied status as well as work done while on an open work permit.

**Students:** Any work performed during a period in which the FN was authorized to study on a full-time basis in Canada is *not* included in cumulative duration totals.

The FN must include a 10-year history of employment on his or her work permit application form, including all periods of work in Canada (even work that does not require a work permit). An officer will verify this information against system data, and determine if these periods of work are to be included in the total work calculation.

#### Exceptions (see [Appendix B](#), Type C)

When a TFW is working within one of the occupations or categories listed as ‘exceptions’ to the cumulative duration regulation, the time worked in Canada is **STILL COUNTED** in the TFW’s cumulative total.



It is only at the point of application/request for a work permit, that these ‘exceptions’ become relevant, and an officer may issue a work permit to a TFW with a job offer in one of these occupations/categories regardless of whether the TFW has acquired four years of work in Canada or not.

*Example:*

*Jorge has been authorized to work as a university professor in Canada since April 2, 2011. His current work permit expires April 2, 2015. In February 2015, Jorge is informed by the university that his services will no longer be required. Jorge would still like to remain in Canada, but is up for a change of pace, so would like to take a job planting trees in northern BC for one year. He submits an application in Canada for a new work permit on March 1, 2015. System data shows that he has accumulated 4 years less a month of work in Canada, and, since the new position is not one of the ‘exceptions’ categories, the work permit could either be issued until April 2, 2015 or denied under [R200\(1\)\(b\)](#).*

### Gaps in employment

Periods not worked (outside of the expectations stipulated in the job contract) that occurred after April 1, 2011, and *during the validity period* of any work authorizations issued after April 1, 2011, may be factored into the calculation of the accumulated total, provided that documentary evidence (see [Appendix C](#)) of these gaps in employment can be presented to an officer at the time when a request for work authorization is made.

**Only gaps in employment of one consecutive month or more will be considered.** The onus is on the client to indicate this intent and provide satisfactory supporting evidence at the time of application.

Some examples of acceptable gaps in employment are:

- Periods of time spent outside of Canada
- Periods of medical leave spent in Canada, if this period is not covered by the employment contract/agreement
- Maternity/paternity leave spent in Canada

**Note:**

Weekends, vacation, part-time work, or alternative work arrangements are not considered elements that would reduce the time worked.

### When the “clock” resets to zero (see [Appendix D](#) below for examples)

A TFW who spends four consecutive years either a) outside of Canada, or b) in Canada but not working, i.e., with legal status as a visitor or student, may apply for a WP and can start accumulating another four years of work in Canada.

**Note:**

It is not necessary for a TFW to have worked a full four years before the four-year period of not working in Canada can begin. For example, whether a TFW has accumulated one (1) year, or even three (3) years and 11 months of work in Canada, once a period of four (4) years has elapsed where the TFW has *not* worked in Canada, the “clock” resets to zero.

### TFWs must keep track of time worked

As of April 1<sup>st</sup>, 2011, foreign nationals are required to keep track of their accumulated time worked in Canada.

In order to avoid delays or other issues when applying for a work permit, TFWs are encouraged to be aware of their time worked in Canada, as well as to retain documents supporting any gaps in employment during the validity periods of previous work authorizations if they intend to reclaim the time. TFWs are already required

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to disclose their 10-year employment history in the work permit application so this requirement is consistent with current Citizenship and Immigration Canada requirements.

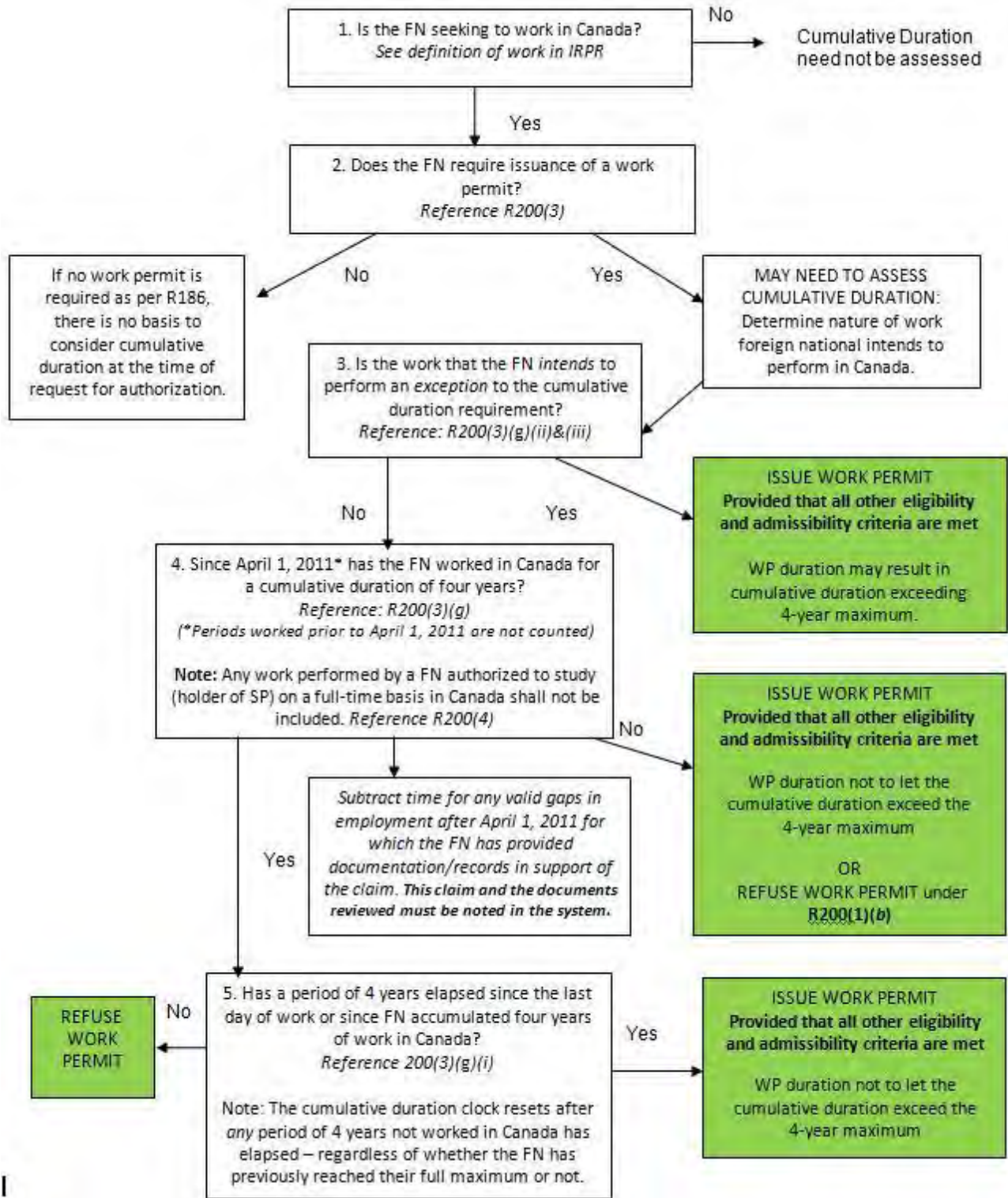
**Employers:** An employer should consider the cumulative total for the TFW they wish to hire to ensure that the TFW is able to work the full duration needed.

#### **More information**

More information on the four-year maximum rule can be found on the [Work in Canada](#) page of the Citizenship and Immigration Canada website.

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Appendix A – Decision-making process for issuing a Work Permit or Extension when considering Cumulative Duration



## Description: Decision-making process for issuing a Work Permit or Extension when considering Cumulative Duration

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### 1. Is the FN seeking to work in Canada?

If the activity does not meet the definition of work under IRPA, cumulative duration is not a consideration.

### 2. Does the FN require issuance of a work permit?

Subsection [200\(3\)](#) of the regulations provides that an officer shall not *issue a work permit* to a FN under certain circumstances. So this prohibition only applies in the context of work permit applications.

### 3. Is the work the FN *intends* to perform an exception to the cumulative duration requirement?

Regardless of whether or not the FN may have already acquired four years (or more) of work in Canada, the cumulative duration regulation does not need to be a consideration if the FN is applying to work in an occupation that falls under the specific categories that are an exception to the regulation, and a work permit can be issued. Subparagraphs [R200\(3\)\(ii\)](#) & [R200\(3\)\(iii\)](#) outline under what circumstances a work permit may be issued despite the fact that the FN has worked in Canada for a cumulative duration of four years.

### 4. Has the FN worked in Canada for a cumulative duration of four years?

Paragraph [R200\(3\)\(g\)](#) of IRPR states that a work permit should not be issued when “the individual has worked in Canada for one or more periods totalling four years”. This section refers to the FN having worked in Canada and does not specifically refer to having a work permit. This means that any activity that meets the legislative definition of work, regardless of whether or not the FN held a work permit, would be counted against the four years of cumulative duration (see Type A in [Appendix B](#)). The only exception to that is found in [R200\(4\)](#) which states that “a period of work in Canada by a FN shall not be included in the calculation of the four-year period referred to in paragraph (3)(g) if the work was performed during a period in which the FN was authorized to study on a full-time basis in Canada”.

Accumulated time worked in Canada is determined by looking at records in the system — starting with the most recent record and going back no further than April 1, 2011 — and adding together the full durations of periods authorized to work in Canada. For example, if a two-year work permit was issued based on the job contract, it is counted as two (2) years towards the accumulated time worked in Canada (unless a claim in regard to a gap in employment can be supported).

**Issuing a work permit for a shorter duration than requested:** as per the cumulative duration regulation [[R200\(3\)\(g\)](#)], a work permit may be issued for a shorter duration than requested, if issuing the work permit for the full duration would result in the foreign national exceeding the four-year maximum. *Visible remarks* must be entered by the processing officer so that the work permit indicates the reason for the shorter duration and that no subsequent extensions of this authorization will be approved.

### 5. Has a period of four (4) years elapsed since the day on which the FN accumulated four years of work in Canada?

The onus is on the applicant to satisfy the officer as to whether or not four (4) years of work has been accumulated. It is important to note that the clock “resets” once four years of time not worked in Canada has been accumulated. For example, if a worker accumulated four years *or less* of time worked in Canada since April 1, 2011, then the worker leaves Canada and returns in four years, the cumulative total resets to zero, and the worker is again eligible to work in Canada for another four years.

**Refusing under [R200\(3\)\(g\)](#):** a work permit application or request can be refused under [R200\(3\)\(g\)](#) when a FN has worked in Canada for one or more periods totalling four years, and four years has not elapsed since the day on which the FN accumulated four years of work in Canada.

**Refusing under [R200\(1\)\(b\)](#):** a work permit application or request can be refused under [R200\(1\)\(b\)](#) if an officer is not satisfied that the FN will leave Canada at the end of the period authorized for their stay. If the FN has only a short term remaining on their maximum four years of work in Canada, and the job offer duration exceeds the amount of time remaining, this could be a consideration. Issuance of a short term work permit — necessary to prevent exceeding the four-year maximum — may provide a temptation for a FN to stay in Canada beyond the period authorized for their stay. Of course, [R200\(1\)\(b\)](#) remains applicable to all work permit decisions, even where exceptions to [R200\(3\)\(g\)](#) apply.

***Officers are to include details of Cumulative Duration calculations and determinations in system notes.***

## **Appendix B – Clarifying what types of occupations count toward a TFW’s total and when the exceptions are relevant**

### **Type A**

ALL WORK performed in Canada after April 1, 2011, counts towards cumulative duration.

Examples:

- All NOCs; LMO-required and LMO-exempt occupations;
- Open work permits, including Post-Graduation Work Permit;
- [R186](#) authorizations (work permit exempt);
- Work during implied status;
- Internships – if NOT as part of F/T studies as a student;
- Unpaid work;
- Work as a volunteer;
- Self-employed FNs (i.e., physicians under C10, business owners under C11).

### **Type B**

Work not counted – [R200\(4\)](#):

- Work done while a full-time student: co-ops, internships and other employment while authorized to study full-time.

### **Type C**

When a FN is applying for a work authorization, these categories or occupations are the *exceptions for which* a work permit can exceed the four-year limit – [R200\(3\)\(ii\)&\(iii\)](#):

- NOC 0 and A.
- *LMO exempt jobs under:*
  - International agreements [[R204\(a\)](#) and [\(b\)](#)]: e.g., NAFTA;
  - Canadian interests ([R205](#));
  - Self-support ([R206](#));
  - Humanitarian reasons ([R208](#)).

**Note:** With regard to spouses of TFWs who are LMO-exempt, only spouses/dependants of *skilled TFWs (NOC 0 and A)* would be exempt from the cumulative duration considerations when seeking a WP.

- Applicants under the Seasonal Agricultural Workers’ Program (SAWP).

- [R186](#) – No WP required, therefore no basis for assessing cumulative duration of work done in Canada.

**Note:** If a FN who is exempt under [R186](#) chooses to apply for/request a WP for personal reasons, i.e., provincial benefits, the processing officer will now be obligated to assess his/her accumulated time worked in Canada, and the WP will not be able to exceed the four-year maximum allowed.

- Permanent Resident (PR) applicants who have received a positive selection decision or approval in principle in the PR category for which they have applied.
- Provincial Nominees applying for an employer-specific work permit under [R204\(c\)](#) (nomination must be valid and current).

#### **Appendix C – Possible proof documents supporting gaps in employment occurring after April 1, 2011**

- Passport entry and exit stamps;
- Official documents indicating that the employment started and/or ended on certain dates; for example, a Record of Employment or proof of receipt of severance pay;
- Letter from a foreign educational institution stating that the FN was attending their institution for a period of time during the work permit authorization;
- Travel receipts including ticket and boarding passes demonstrating that the FN was out of the country for a period of time during the work permit authorization other than a period of paid leave (e.g., sick leave, vacation leave) from their employment; compare with information regarding period of employment to see whether leave was covered by contract terms;
- Proof of receipt of maternity/parental benefits;
- Letter from physician confirming the FN was on medical leave for a certain period of time; compare with information regarding period of employment to see whether leave was covered by contract terms;
- If a FN did not complete the full duration of a work permit due to poor working conditions or workplace injury, a letter supporting the issuance of a new work permit may have been provided by a Province or Territory, and indicating the gap in employment;
- FNs working under a Group of Employers (GoE) agreement may experience short periods of no work between projects, and a letter from the GoE Administrator can be accepted.

#### **Appendix D – Examples of the four-year maximum rule**

- Since April 1, 2011, the TFW has accumulated three years of work in Canada, and is now applying for a two-year work permit in an occupation that is not listed in the ‘exceptions’. The work permit would only be issued for one year.
- FN works for three (3) years, leaves Canada for three (3) years, and applies for a two year work permit. Issue a one (1) year work permit, and he has to wait another 4 years before clocks resets and can apply again. If he had waited another year outside Canada, he could have worked another full four years in Canada.
- FN works three years and 11 months in Canada on a work permit, stays outside Canada for three years, and then enters to work under [R186](#) for 2 months. He leaves Canada and is now not eligible for a work permit for another four years.

## VIII. Appendix B—Temporary Foreign Worker Guidelines

### FW 1 Temporary Foreign Worker Guidelines

#### 3.5 What training functions are permitted for professionals?

Professionals can enter Canada to provide training related to their profession, including conducting seminars.

The training session must be pre-arranged with a Canadian employer and the subject matter must be at the professional level. Entry does not allow seminar leaders to engage in training that is not pre-arranged with a Canadian employer.

The training must form part of the professional training or development of the participants and must be related to their job duties.

#### 3.6 What documents are issued?

Persons who qualify in the Professionals category may be issued a work permit pursuant to R204(a), T23.

#### 3.7 How long can a work permit be issued and can it be extended?

**Includes update from OB 85.**

Initial work permits can be granted for durations of up to three years.

Extensions can also be issued in increments of up to three years with no limit on the number of extensions providing the individual continues to comply with the requirements for professionals.

Officers must be satisfied that the employment is still "temporary" and that the applicant is not using NAFTA entry as a means of circumventing normal immigration procedures.

#### 3.8 Appendix 1603.D.1 - Professionals (Amended)

Amended to include interpretive notes – the official text of Appendix 1603.D.1 is available at [www.dfait-maeci.gc.ca/nafta-alena/agree-e.asp](http://www.dfait-maeci.gc.ca/nafta-alena/agree-e.asp)

**Note:** A business person seeking temporary entry under this Appendix may also perform training functions relating to the profession, including conducting seminars. It is to be noted that the subject of the workshop or seminar must be in the field for which professional qualification is held. The workshop or seminar must be for professional training or development purposes related to the occupation or to the job duties of the participants.

Profession	Minimum education requirements and alternative credentials (in a related field or profession)
<b>General</b>	
1111-A Accountant	Baccalaureate or Licenciatura Degree, or C.P.A., C.A., C.G.A. or C.M.A.
2151-A Architect	Baccalaureate or Licenciatura Degree; or state/provincial licence. ("State/provincial licence" and "state/provincial/federal licence" mean any document issued by a state, provincial or federal government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.)
2171-A Computer Systems Analyst	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years' experience.  <b>Note:</b> "Post-Secondary Diploma" means a credential issued, on completion of two or more years of post-secondary education, by an accredited academic institution in Canada or the U.S.  <b>Note:</b> "Post-Secondary Certificate" means a certificate issued, on completion of two or more years of post-secondary education at an academic institution, by the federal government of Mexico or a state government in Mexico, an

## FW 1 Temporary Foreign Worker Guidelines

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	academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.
Disaster Relief Insurance Claims Adjuster (claims adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)	Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years experience in claims adjustment and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims
<b>Note:</b> For the purposes of this provision, a disaster shall be an event so declared by the Insurance Bureau of Canada or sub-committee thereof through activating the <i>Insurance Emergency Response Plan</i> .	
Economist	Baccalaureate or Licenciatura Degree
Engineer	Baccalaureate or Licenciatura Degree; or state/provincial licence
Forester	Baccalaureate or Licenciatura Degree; or state/provincial licence
Graphic Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Hotel Manager (See note below for further details.)	Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post-Secondary Diploma or Post-Secondary Certificate in hotel/restaurant management, and three years experience in hotel/restaurant management
<b>Note:</b> This provision refers to a management position to which other managers report, e.g., general manager, director. It also refers to specialty managers, e.g., food and beverage managers, convention services managers within a hotel.	
Industrial Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Interior Designer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Land Surveyor	Baccalaureate or Licenciatura Degree; or state/provincial/federal licence
Landscape Architect	Baccalaureate or Licenciatura Degree
Lawyer (including Notary in the Province of Quebec)	LL.B., J.D., LL.L, B.C.L. or Licenciatura Degree (five years); or membership in a state/provincial bar
Librarian (See note below for the requirements of a librarian.)	M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite)
<b>Note:</b> A librarian must have either: 1. a Master of Library Science degree; or 2. a Bachelor of Library Science and another baccalaureate degree which was necessary to enter the B.L.S. program.	
Management Consultant (See notes below for further details.)	Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of



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	specialty related to the consulting agreement
<p>Notes:</p> <ol style="list-style-type: none"> <li>1. A management consultant provides services which are directed toward improving the managerial, operating, and economic performance of public and private entities by analyzing and resolving strategic and operating problems. The management consultant does not take part in the company's production but seeks to improve the client's goals, objectives, policies, strategies, administration, organization, and operation. Generally a management consultant is hired on contract to do project work to deal with specific issues or problems.</li> <li>2. A management consultant may provide the following range of services: <ul style="list-style-type: none"> <li>• conduct a comprehensive examination of the client's business to isolate and define problems;</li> <li>• prepare a presentation and report all findings to the client;</li> <li>• work with the client to design and implement in-depth working solutions.</li> </ul> </li> <li>3. Management consultants assist and advise in implementing recommendations but do not perform functional/operational work for clients or take part in the company's production.</li> <li>4. Any training or familiarization that is provided to management and personnel on an individual or group basis: <ul style="list-style-type: none"> <li>• must be incidental to the implementation of new systems and procedures which were recommended in the management consulting report;</li> <li>• must be performed by permanent (indeterminate) employees of the recommending American or Mexican management consulting firm.</li> </ul> </li> <li>5. Typically, a management consultant is an independent contractor or an employee of a consulting firm under contract to a Canadian client. A management consultant can also occupy a permanent position on a temporary basis with a Canadian management consulting firm.</li> </ol>	
Mathematician (including Statistician and Actuary)	Baccalaureate or Licenciatura Degree An Actuary must satisfy the necessary requirements to be recognized as an actuary by a professional actuarial association or society operating the territory of at least one of the Parties
Range Manager/Range Conservationalist	Baccalaureate or Licenciatura Degree
Research Assistant (working in a post-secondary educational institution)	Baccalaureate or Licenciatura Degree
Scientific Technician/Technologist (See below for further details.)	Possession of (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics; and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research
<p>A business person in this category must be seeking temporary entry to work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics.</p> <p>Notes:</p> <ol style="list-style-type: none"> <li>1. A baccalaureate degree is not normally held by a scientific technician/technologist; therefore, an applicant must possess the skills noted above.</li> <li>2. Basic research is theoretical or conceptual and is not conducted with a specific purpose or result in mind. Applied research is conducted with a practical or problem solving purpose in mind.</li> </ol>	

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### Additional guidance (as agreed to by all parties of the Working Group, Dec. 2001):

Individuals for whom ST/Ts wish to provide direct support *must qualify as a professional in their own right* in one of the following fields: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics.

A general offer of employment by such a professional is not sufficient, by itself, to qualify for admission as a Scientific Technician or Technologist. The offer must demonstrate that the work of the ST/T will be *interrelated with* that of the supervisory professional. That is, the work of the ST/T must be managed, coordinated and reviewed by the professional supervisor, and must also provide input to the supervisory professional's own work.

The ST/T's theoretical knowledge should generally have been acquired through the *successful completion of at least two years of training* in a relevant educational program. Such training may be documented by presentation of a diploma, a certificate, or a transcript accompanied by evidence of relevant work experience.

Use the National Occupational Classification (NOC) in order to establish whether proposed job functions are consistent with those of a scientific or engineering technician or technologist.

Not admissible as ST/Ts are persons intending to do work that is normally done by the construction trades (welders, boiler makers, carpenters, electricians, etc.), even where these trades are specialized to a particular industry (e.g., aircraft, power distribution).

Social Worker	Baccalaureate or Licenciatura Degree
Sylviculturist (including Forestry Specialist)	Baccalaureate or Licenciatura Degree
Technical Publications Writer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Urban Planner (including Geographer)	Baccalaureate or Licenciatura Degree
Vocational Counsellor	Baccalaureate or Licenciatura Degree
<b>Medical/Allied Professional</b>	
Dentist	D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental; or state/provincial license
Dietitian	Baccalaureate or Licenciatura Degree; or state/provincial license
Medical Laboratory Technologist (Canada)/ Medical Technologist (Mexico and the U.S.) (See note below for further details.)	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
<b>Note:</b> A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment or prevention of disease.	
Nutritionist	Baccalaureate or Licenciatura Degree
Occupational Therapist	Baccalaureate or Licenciatura Degree; or state/provincial license
Pharmacist	Baccalaureate or Licenciatura Degree; or state/provincial license
Physician (teaching or research only) (See note below for further details.)	M.D. or Doctor en Medicina; or state/provincial license
<b>Note:</b> Physicians may not enter for the purpose of providing direct patient care. Patient care	

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incidental to teaching and/or research is permissible.	
Physiotherapist/Physical Therapist	Baccalaureate or Licenciatura Degree; or state/provincial license
Psychologist	State/provincial license; or Licenciatura Degree
Recreational Therapist	Baccalaureate or Licenciatura Degree
Registered Nurse (See note below for further details.)	State/provincial license; or Licenciatura Degree
<b>Note:</b> To be authorized to enter Canada as a registered nurse, a licence issued by the province of destination is necessary.	
Veterinarian	D.V.M., D.M.V. or Doctor en Veterinaria; or state/provincial license
<b>Scientist</b>	
Agriculturist (including Agronomist)	Baccalaureate or Licenciatura Degree
Animal Breeder	Baccalaureate or Licenciatura Degree
Animal Scientist	Baccalaureate or Licenciatura Degree
Apiculturist	Baccalaureate or Licenciatura Degree
Astronomer	Baccalaureate or Licenciatura Degree
Biochemist	Baccalaureate or Licenciatura Degree
Biologist (including Plant Pathologist)	Baccalaureate or Licenciatura Degree
Chemist	Baccalaureate or Licenciatura Degree
Dairy Scientist	Baccalaureate or Licenciatura Degree
Entomologist	Baccalaureate or Licenciatura Degree
Epidemiologist	Baccalaureate or Licenciatura Degree
Geneticist	Baccalaureate or Licenciatura Degree
Geologist	Baccalaureate or Licenciatura Degree
Geochemist	Baccalaureate or Licenciatura Degree
Geophysicist (including Oceanographer in Mexico and the U.S.)	Baccalaureate or Licenciatura Degree
Horticulturist	Baccalaureate or Licenciatura Degree
Meteorologist	Baccalaureate or Licenciatura Degree
Pharmacologist	Baccalaureate or Licenciatura Degree
Physicist (including Oceanographer in Canada)	Baccalaureate or Licenciatura Degree
Plant Breeder	Baccalaureate or Licenciatura Degree
Poultry Scientist	Baccalaureate or Licenciatura Degree
Soil Scientist	Baccalaureate or Licenciatura Degree
Zoologist	Baccalaureate or Licenciatura Degree
<b>Teacher</b>	
College	Baccalaureate or Licenciatura Degree
Seminary	Baccalaureate or Licenciatura Degree
University	Baccalaureate or Licenciatura Degree

## 4 INTRA-COMPANY TRANSFEREES

### 4.1. What requirements apply to intra-company transferees?

The following requirements apply:

- citizenship of the U.S. or Mexico;
- seeking employment in an executive or managerial capacity or one involving "specialized knowledge";