

Canadian Work Permits for Multinational Organizations

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Multinational Organizations Frequently Transfer Employees Between Offices

- Multinational companies must frequently transfer executives, senior managers, and specialized personnel to Canada.
- This includes foreign companies with existing operations in Canada, Canadian companies transferring foreign employees to their Canadian office, and foreign companies that are establishing new operations in Canada.
- There are a number of work permit options that could be used to achieve this objective.
- Each work permit type has advantages and disadvantages.

Multinational Organizations Frequently Transfer Employees Between Offices

- The work permit categories that are frequently utilized by multinational companies include:
 - C12 Intracompany transferee work permits
 - Intracompany transferee work permits under Free Trade Agreements;
 - C20 reciprocal employment work permits;
 - Professional work permits under Free Trade Agreements; and
 - Work permits under the new Global Talent Stream.

C12 Intracompany Transferee Work Permits

- The C12 is the most commonly used work permit in the case of multinational companies. The benefits include:
 - No labour market test;
 - Available to executives, senior managers, and specialized knowledge workers;
 - Initial period of stay typically 3 years (1 year in the case of start up offices);
 - Maximum period of stay is 7 years for executives/managers and 5 years for specialized knowledge workers; and
 - If the foreign national wishes to seek PR under Express Entry, can be used for arranged employment points.

C12 Eligibility Requirements - General

- In order to qualify, the following must apply:
 - The transferring entity and transferee entity must be related as parent-subsidiary, affiliate, or branch office.
 - Applicant must have been employed by the transferring entity for at least one year within the preceding three years.
 - Applicant must have been employed in a position that was executive, managerial, or specialized knowledge.
 - Applicant must be transferring to a “similar” position within the Canadian entity.
 - In the case of specialized knowledge workers, they must be paid at least the median wage for the position in the proposed work location.

C12 Eligibility Requirements – Executive Capacity

- “Executive capacity” means that the employee primarily:
 - Directs the management of the organization or a major component or function of the organization;
 - Establishes the goals and policies of the organization, component, or function;
 - Exercises wide latitude in discretionary decision-making; and
 - Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

C12 Eligibility Requirements – Managerial Capacity

- “Managerial capacity” means that the employee primarily:
 - Manages the organization, a department, subdivision, function, or component of the organization;
 - Supervises and controls the work of: (1) other managers or supervisors, (2) professional employees, or (3) manages an essential function;
 - Has the authority to hire and fire, or recommend these and other personnel actions (or if no other employee is directly supervised, functions at a senior level); and,
 - Exercises discretion over the day-to-day operations of the activity or function for which the employee has the authority.

C12 Eligibility Requirements – Managerial Capacity

- “Functional managers” in the intra-company transferee context, manage an essential function in the company, but do not necessarily manage staff. They must:
 - Manage at a senior level within the organization or within the function managed; and
 - Have discretion over the day-to-day operations of the function.
- Factors considered include: (1) providing coordination and guidance to other managers, (2) having responsibility over assets or sales with a large dollar value, and (3) directing the work of subcontracted firms.

C12 Eligibility Requirements – Specialized Knowledge

- Several years ago, IRCC issued new guidance that applies a stricter interpretation of “specialized knowledge.” An applicant is now required to demonstrate a high degree of both proprietary knowledge and advanced expertise.
 - Proprietary knowledge is company-specific expertise related to a company’s product or services and is not known outside the company.
 - An applicant must have: (1) uncommon knowledge of the company’s products or services and its application in international markets; or (2) an advanced level of expertise or knowledge of the company’s processes and procedures.

C12 Eligibility Requirements – Specialized Knowledge

- An applicant also requires an advanced level of expertise in the area of specialized knowledge, gained through significant (i.e. the longer the experience, the more likely the knowledge is “specialized”) and recent (i.e. within the last 5 years) experience with the organization.
- Despite this new guidance, it is still possible to successfully argue specialized knowledge, especially for highly technical occupations.
- The above guidance for specialized knowledge does not apply to intracompany transferee work permits under Free Trade Agreements that provide their own definition of specialized knowledge (i.e., Colombia and Peru).

C12 Eligibility Requirements – Mandatory Wage Floor for Specialized Knowledge Workers

- C12 specialized knowledge workers are now subject to a mandatory wage floor equal to the prevailing/median wage for the occupation in the area of intended employment.
- The median wage is determined by wage information appearing in the Canadian Government's Job Bank.
- A C12 specialized knowledge worker who is paid less than the median wage will have their work permit application denied.
- The mandatory wage floor does not apply to specialized knowledge intracompany transferee work permits filed under a Free Trade Agreement.

C12 Eligibility Requirements – Start-Up Offices

- Additional requirements apply where the Canadian entity is a start-up:
 - The company must generally secure physical premises in Canada.
 - The company must furnish realistic plans to staff the new operation.
 - The company must have the financial ability to commence business in Canada and compensate employees.
 - When transferring an executive or manager, the company must demonstrate that the Canadian office will be large enough to support the executive or management function.

C12 Eligibility Requirements – Start-Up Offices

- When transferring a specialized knowledge worker, the company must: (1) demonstrate that it is expected to be doing business, and (2) ensure that work is guided and directed by management at the Canadian operation.

Intracompany Transferee Work Permits under Free Trade Agreements

- Canada's Free Trade Agreements typically contain intracompany transferee work permits that are available to citizens (and in some cases, permanent residents) of the foreign countries that are parties to those agreements.
- Requirements are generally very similar to the C12.
- In general, it is advisable to seek an intracompany transferee work permit under a Free Trade Agreement, if one is available. Advantages include: (1) more relaxed definition of specialized knowledge in some cases (i.e, Colombia and Peru), (2) additional options in some cases (i.e. "Management Trainee on Professional Development" for South Korea), and (3) mandatory wage floor does not apply.

C20 Reciprocal Employment Work Permit

- This option should be considered if the applicant does not yet have one year of employment abroad with the related foreign entity.
- The C20 allows foreign workers to work in Canada when Canadians have similar reciprocal opportunities abroad.
- Often a company's "Global Mobility Policy" will provide evidence that an exchange program is in place.
- Must also demonstrate bilateral flow of personnel. No requirement of exact reciprocity (i.e., one for one exchange), but general order of magnitude of exchanges should be reasonably similar on an annual basis.

C20 Reciprocal Employment Work Permit

- In assessing reciprocity, immigration officers can consider employment duration and job level, in addition to the number of employees.
- The C20 could be utilized even in the case of a newly established Global Mobility Policy, where there is no prior history of reciprocal exchanges with Canada.
- In the case of a new Global Mobility Policy, immigration officers will likely limit work permits to a small number of individuals until reciprocity has been demonstrated.

Professional Categories Under the Free Trade Agreements

- Each of Canada's Free Trade Agreements includes a work permit category for professionals. However, the eligibility requirements will vary depending on which Free Trade Agreement applies.
- Only the professional category described in the North American Free Trade Agreement ("NAFTA") will be discussed.
- The NAFTA Professional work permit is available to U.S. Citizens who will be working in one of the designated professions listed in Appendix 1603.D.1 of the NAFTA.

Professional Categories Under the Free Trade Agreements

- Must demonstrate that the proposed duties in Canada are consistent with the stated profession. Typically, proposed job duties are compared to the job descriptions in the *National Occupational Classification*.
- Must possess the minimum credential requirements described in Appendix 1603.D.1 of the NAFTA. Typically a relevant bachelor degree is required but some professions require less than a bachelor.
- Must be entering Canada to perform pre-arranged employment for a Canadian employer/entity.
- Must comply with existing immigration requirements for temporary entry.

Professional Categories Under the Free Trade Agreements

- NAFTA Professionals may not engage in self-employment. If the Canadian entity is substantially controlled by the applicant, the application will be denied. Substantial control can be found to exist where the applicant has *de facto* control.
- Although many of the listed professions are regulated in Canada, proof of licencing in Canada is not a prerequisite to the issuance of a NAFTA Professional work permit. The one exception is for nurses, who must possess a Canadian nursing licence before the work permit will be issued.
- NAFTA Professional work permits may be issued for 3 years at a time, with no set limit on the total number of years.

Work Permits under the Global Talent Stream

- Introduced in 2017 as part of Canada's Global Skills Strategy, the Global Talent Stream is a “friendlier” version of the LMIA.
- Designed to provide employers with a faster way of hiring highly-specialized and skilled foreign talent.
- Similarities to the classic high-wage/low-wage LMIA:
 - Two-stage process which first requires approval from ESDC before the temporary foreign worker can submit a work permit application.
 - \$1,000 application fee for each position requested (must be paid by employer).

Benefits of the Global Talent Stream

- Unlike a normal LMIA, the benefits of the Global Talent Stream include:
 - No test of the labour market required before hiring foreign talent;
 - A two-week service standard for adjudication of LMIA;
 - Applicants are also eligible for two-week visa processing under the Global Skills Strategy.
 - Non-adversarial process; and
 - Predictable.

Global Talent Stream – Two Categories

- **Category A** - Designed for innovative Canadian employers that require unique and specialized talent to help the firm scale-up and grow.
- **Category B** - Designed for employers that require highly-skilled foreign workers to fill occupations considered by ESDC to be in-demand, for which there is insufficient domestic labour supply.

Global Talent Stream – Category A

- Category A requires the employer to obtain a referral from one of the Global Talent Stream's designated referral partners on the basis that the position being requested requires unique and specialized talent to help the firm scale-up and grow.
- The list of designated referral partners primarily include various departments of government at the municipal, provincial, and federal level, as well as non-profit organizations.

Global Talent Stream – Category A Talent

- A “unique and specialized” position is indicated by:
 - An hourly wage of at least \$38.46 or the median wage for the position in the proposed work location, if that median hourly wage is higher than \$38.46;
 - Advanced knowledge of the industry; and either:
 - Advanced degree in an area of specialization of interest to the employer; or
 - Minimum of five years of experience in the field of specialized experience.

Global Talent Stream – Category A Talent

- Generally, ESDC expects employers to be seeking to fill a very limited number of unique and specialized positions (i.e. 1-2 positions per year).
- Each additional position requires the designated referral partner to reconfirm the employer's eligibility.
- Additional positions must command an hourly wage of at least \$72.11 per hour (unless the median wage is higher).

Global Talent Stream – Category B

- The only requirement is that the proposed occupation appear on ESDC's Global Talent Occupations List.
- ESDC has already determined that these occupations are in-demand, and there is currently an insufficient domestic labour supply.
- The Occupations List can change from time to time.
- Employers must pay the minimum hourly wage specified in the Occupations List, or the median wage for the position in the proposed work location, whichever is higher.
- ESDC's Global Talent Stream Occupations List includes:
 - Computer and Information Systems Managers;
 - Computer Engineers;

Global Talent Stream – Category B Occupations

- Mathematicians and Statisticians;
- Information Systems Analysts and Consultants;
- Database Analysts and Data Administrators;
- Software Engineers/Software Designers;
- Computer Programmers;
- Web Designers and Developers;
- Computer Network Technicians;
- Information Systems Testing Technicians;
- Producers, Creative and Artistic Directors, and Project Managers for Visual Effects or Video Games; and
- Digital Media Designers.

Global Talent Stream – The “Catch”

- Global Talent Stream, employers are required to develop a Labour Market Benefits Plan.
- Category A applications require the employer to commit to:
 - One mandatory activity that creates jobs for Canadians and PRs; and
 - Two complementary activities that benefit the labour market in a way other than the mandatory benefit.
- Category B applications require the employer to commit to:
 - One mandatory activity that contributes to the skills and training investments for Canadians and PRs; and
 - Two complementary activities which benefit the labour market in a way other than the mandatory benefit.

Global Talent Stream – Labour Market Benefits Plan

- Examples of mandatory and complementary benefits:
 - Increasing the number of Canadian and PRs employed;
 - Providing paid co-op or internship opportunities for Canadians and PRs;
 - Providing or financially supporting training to Canadians or PRs;
 - Ensuring the newly-hired foreign worker trains and mentors Canadian workers to support knowledge transfer;
 - Developing and implementing policies to support the hiring of underrepresented groups; and
 - Establishing educational partnership with local/regional post-secondary institutions.

Thank you

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