

An overview of Canada's Start-Up Business Class

July 9, 2019

Introduction

Many foreign nationals are now aware that the United States' immigration policies are more restrictive than they have been in the past. For example, President Trump's Buy American and Hire American Executive Order directs government agencies to protect the economic interests of US workers by rigorously enforcing and administering immigration laws.

Despite the fact that the United States (and many other western countries) have adopted more restrictive immigration policies, Canada remains relatively open to accepting new immigrants. According to the 2018 Annual Report to Parliament on Immigration, which was published by Immigration, Refugees and Citizenship Canada (IRCC), Canada could accept as many as 350,000 immigrants in 2019; 360,000 immigrants in 2020; and 370,000 immigrants in 2021.

For the above reasons, many foreign entrepreneurs—who might otherwise have permanently settled in the United States—are now considering Canada as an alternative. Fortunately, Canada offers several immigration options for innovative entrepreneurs, including the Start-Up Business Class.

History of the Start-Up Business Class

In 2011, Congress was considering *S. 565: StartUp Visa Act of 2011*, and *H.R. 1114: StartUp Visa Act of 2011* (collectively, the US StartUp Bills). Under the proposed legislation, foreign entrepreneurs did not need to provide any investment capital. They could establish start-up businesses using capital contributed by third parties, such as venture capital firms or angel investors, and then seek permanent residence based on that business.

The StartUp Bills languished in Congress and the legislation never passed. However, they inspired the Government of Canada to establish a similar program in Canada.

On April 18, 2012, the Government of Canada announced public consultations on the possible creation of a new program to attract immigrant entrepreneurs. On January 24, 2013, it announced that the Government of Canada would launch a start-up visa program to recruit innovative immigrant entrepreneurs who would create new jobs and spur economic growth. On March 30, 2013, Citizenship and Immigration Canada published Ministerial Instructions in the *Canada Gazette*, which formally established the new Start-Up Business Class.

The Start-Up Business Class began as a five-year pilot program targeting immigrant entrepreneurs with the skills and potential to build businesses in Canada that: (a) were innovative, (b) could create jobs for Canadians, and (c) could compete on a global scale. Entrepreneurs seeking permanent residence under the Start-Up Business Class were not required to personally invest any capital in the proposed business.

Despite the fact that the Start-Up Business Class offered innovative entrepreneurs an opportunity to seek permanent residence in Canada, the number of applicants who chose to take advantage of the pilot program was relatively low. According to IRCC's 2018 Annual Report to Parliament on Immigration, it approved only 132 entrepreneurs during the initial five-year period.

Even with the relatively small number of cases processed during its initial five-year period, the Government of Canada considered the pilot program to be a success. On July 18, 2017, IRCC announced its intention to establish a permanent Start-Up Business Class once the pilot program expired on March 31, 2018. The final regulations for the permanent Start-Up Business Class became effective on April 11, 2018.

Eligibility requirements

Commitment from a designated organization

The most important requirement of the Start-Up Business Class is that the foreign national obtain a commitment certificate from a designated organization. Designated organizations consist of Venture Capital Funds, Angel Investor Groups and Business Incubators, which have been approved by IRCC. In order to obtain a commitment from a designated organization, one of the following must occur:

- a. A designated Venture Capital Fund must to agree to invest a minimum of CA\$200,000 in the qualifying business;
- b. One or more investors connected to the designated Angel Investor Groups must to agree to invest a minimum of CA\$75,000 in the qualifying business; or
- c. The qualifying business must be accepted into a business incubator program operated by one of the designated Business Incubators.

Qualifying business

Start-Up Business Class applicants must establish a qualifying business, which meets the following conditions:

- a. At the time that the commitment is received from the designated organization:
 1. Each applicant must hold 10 percent or more of the voting rights attached to all shares of the corporation outstanding at that time (up to five people can apply as owners); and
 2. The applicants and the designated organization must jointly hold more than 50 percent of the total voting rights attached to all shares of the corporation outstanding at that time.
- b. At the time that the applicant(s) receive their permanent residence:
 1. They must provide active and ongoing management of the business from within Canada;
 2. An essential part of the operations of the business must take place in Canada; and
 3. This business must be incorporated in Canada.

Language requirements

Start-Up Business Class applicants must demonstrate sufficient competence in at least one of Canada's official languages. They must take one of the approved language tests, demonstrating a skill level at Canadian Language Benchmark (CLB) 5 or higher, in either English or French, in each of the four language skill areas (speaking, reading, listening and writing).

Sufficient settlement funds

Start-Up Business Class applicants must demonstrate that they have sufficient funds to support themselves (and any dependents) after they arrive in Canada. They cannot borrow these funds.

The amount of settlement funds required will depend on the size of the applicant's family:

Number of family members	Funds required (in Canadian Dollars)
1	\$12,669
2	\$15,772
3	\$19,390
4	\$23,542
5	\$26,701
6	\$30,114
7	\$33,528
For each additional family member	\$3,414

Expected processing time

Once a Start-Up Business Class applicant has submitted his or her permanent residence application, it will take approximately 12 to 16 months to finalize it. However, he or she may apply for a short-term work permit while waiting for the permanent residence case to be completed.

Short-term work permits for Start-Up Business Class applicants

The short-term work permit allows Start-Up Business Class applicants to begin developing the business described in the commitment certificate prior to the approval of their permanent residence case. Such applicants do not need to wait until their permanent residence applications have been submitted. Start-Up Business Class applicants may seek short-term work permits as soon as they have received their commitment certificate from a designated organization.

In order to apply for a short-term work permit, Start-Up Business Class applicants must provide the following documentation (among other things):

- A letter of support from the designated entity, confirming they are "essential" and need a work permit; and
- Proof they have sufficient funds to meet the low-income cut-off (LICO) for their family size, for a period of 52 weeks.

The LICO based on family size is as follows:

Size of family unit	Minimum necessary income (in Canadian Dollars)
1	\$25,338
2	\$31,544
3	\$38,780
4	\$47,084
5	\$53,402
6	\$60,228
7	\$67,055
For each additional family member	\$6,827

The Start-Up Business Class in practice

Some critics have claimed that the Start-Up Business Class is not a practical option for most foreign entrepreneurs because they cannot apply for permanent residence until they have already received a commitment from a

designated organization. To obtain such a commitment, applicants must go through that organization's vetting process, which can be time-consuming. For this reason, some foreign entrepreneurs have chosen to seek permanent residence under an alternate category.

Of course, the Government of Canada never intended for the Start-Up Business Class to be a mass-market immigration program. Rather, it was created to assist a smaller group of foreign entrepreneurs, whose innovative business concepts were already supported by an approved Venture Capital Fund, Angel Investor Group or Business Incubator.

Conclusion

Despite the above criticism, the Start-Up Business Class remains a viable option for entrepreneurs who are prepared to go through the process of obtaining a commitment from a designated organization. For more information about the Start-Up Business Class or its eligibility requirements, please contact Henry J. Chang or another member of Dentons' Immigration group.

Your Key Contacts



Henry J. Chang

Partner, Toronto

D +1 416 863 4571

henry.chang@dentons.com