



May 11, 2016

## Immigration Updates

### Raising the age of dependency

The Liberal government has said that they will be taking steps to return the age of dependency for accompanying children to 22 years old. Currently, children cease to be dependents once they turn 19 years old. The date for when this change will come into effect has not yet been announced.

In addition to this confirmed change, there are still some changes promised in the Liberal platform which have yet to come to fruition. These include:

- Granting points under Express Entry to applicants who have Canadian citizen siblings;
- Doubling the quota under the parent and grandparent sponsorship class from 5,000 to 10,000; and
- Removing the two-year conditional permanent resident status imposed on sponsored spouses and going back to granting unconditional permanent resident status immediately upon arriving in Canada.

It will be interesting to see when and if any of these proposed changes will be rolled out. If you or your company would like to remain up to date with any policy or processing changes in Canadian immigration, be sure to sign up for the **GGG' email alerts** and/or follow us on twitter @Guberman\_Garson.

### United States implements changes to Visa Waiver Program

In the wake of the Paris and San Bernardino attacks in the latter half of 2015, the United States quickly passed the *Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015* (the "Act") as part of the omnibus appropriations bill for 2016.

Signed into law by President Obama on December 18, 2015, the Act restricts visa-free travel for certain Visa Waiver Program (VWP) travelers who are dual nationals or who have traveled to countries of concern.

### **The VWP**

Under the VWP, citizens of program countries must receive approval through the Department of Homeland Security (DHS)'s Electronic System for Travel Authorization (ESTA) before they are permitted to board a carrier for travel to the United States. Using information from U.S. law enforcement and intelligence agencies, the DHS determines if a traveler poses a law enforcement or security risk. If the traveler receives approval, he or she may visit the United States for up to 90 days without having to first obtain a visitor visa at a U.S. Consulate or Embassy abroad.

### **The changes**

Under the Act, VWP travelers who:

1. have traveled, in the last five years (on or after March 1, 2011) to Iraq, Syria, a country designated by the Secretary of State as a country supporting terrorism (i.e. Sudan or Iran) or any other country or area of concern designated by the Secretary of Homeland Security (i.e. Libya, Somalia or Yemen), or
2. are a national of Iraq, Syria, Iran or Sudan

are restricted from using the VWP and must apply for a nonimmigrant visa at a U.S. Consulate or Embassy abroad.

Limited exceptions are available for travelers who have previously traveled to or been physically present in one of the above-mentioned countries if the travel was pursuant to official military orders or official government business. Waivers are also available in limited circumstances as noted below.

U.S. Customs and Border Protection (CBP) is engaging with the Departments of State and Commerce in extensive outreach to inform all current ESTA holders of the new requirements. As a precautionary measure, current ESTA holders are encouraged to confirm the status of their ESTA online prior to travel.

### **Options for affected travelers**

Under the Act, the Secretary of Homeland Security may waive these restrictions if he determines that a waiver is in the law enforcement or national security interests of the United States. Categories of travelers who may be eligible for a waiver include:

1. Individuals who traveled to Iran, Iraq, Sudan or Syria on behalf of international organizations, regional organizations, and sub-national governments on official duty;
2. Individuals who traveled to Iran, Iraq, Sudan or Syria on behalf of a humanitarian non-governmental organization (NGO) on official duty;
3. Individuals who traveled to Iran, Iraq, Sudan or Syria as a journalist for reporting purposes;
4. Individuals who traveled to Iran for legitimate business-related purposes following the conclusion of the Joint Comprehensive Plan of Action (July 14, 2015); and
5. Individuals who have traveled to Iraq for legitimate business-related purposes.

Waivers will be considered on a case-by-case basis as part of the ESTA process.

While affected travelers are still eligible to apply for a visa at a U.S. Consulate or Embassy abroad, appointment availability, visa issuance backlogs and documentary requirements should be considered. If immediate business, medical or humanitarian travel is required, applicants may request an expedited appointment.

### **e-Passport requirements**

Starting April 1, 2016, all VWP travelers must now present an e-Passport when applying for admission to the United States. An e-Passport is an electronic passport that is machine readable and contains information such as the traveler's name, date of birth and other biographical data. The introduction of the e-Passport requirement is intended to prevent identity theft and safely identify travelers.

Travelers who do not possess an e-Passport must obtain a visitor visa at a U.S. Consulate or Embassy abroad before travelling to the U.S.

### **Stakeholder action**

While Congress adopted the Act based on legitimate concerns that may necessitate the introduction of new measures to maintain the highest standards of security and border protection, some lawmakers, stakeholders and practitioners have criticized the Act's blanket restriction on VWP travel for dual-nationals and the haphazard approach to waivers as both discriminatory and ineffective.

In response to the vocal criticism to the Act, bipartisan members of the House of Representatives introduced the *Equal Protection in Travel Act of 2016* which would remove restrictions on certain dual nationals from participating in the VWP. More than 60 organizations have urged Senate and House members to support the measure. The bill has been referred to the Subcommittee on Immigration and Border Security for consideration.

### **What you should do**

If you are an individual potentially impacted by the Act, you should allow extra time to obtain a visa prior to your travel to the United States. For human resources and other corporate immigration leads, it is important that you factor in the additional time required to obtain a visa in your business travel and global mobility planning.

If you have any questions about the recent changes, please do not hesitate to contact one of our professionals.

## **International students in Canada**

Notwithstanding the high caliber education that an international student might receive in Canada, one of the driving forces for any student is the possibility of future Canadian employment experience and permanent residency in Canada.

Immigration, Refugee and Citizenship Canada (IRCC), formerly Citizenship and Immigration Canada, has historically recognized the value of international students to its overall goal of recruiting top talent immigrants. However, since the launch of the Express Entry in January 2015, their objective has been challenged.

### **Where are foreign students able to study?**

Canada has over 300,000 foreign students enrolled in various post-secondary institutions identified as Designated Learning Institutions (DLI). Foreign students need a letter of acceptance from the DLI, and the DLI's school number to place on their study permit application. The DLI list is updated on a regular basis to allow students to search for a specific school. Once you've applied for a study permit, foreign students can begin their preparation – documents for their arrival, leaving and entering Canada, and health insurance.

### **Can foreign students work while studying?**

Each student who graduates from these institutions is encouraged to take advantage of the Post Graduate Work Permit available for up to 3 years depending on the length of the individual educational program. The opportunity to work and gain experience while you study is a significant selling point for Canadian universities recruiting foreign students, but this is where the advantages end. In an increasingly competitive market, many foreign students choose Canada on account of its path to permanent residence. However, many international students now feel that the Express Entry system has led to an unclear future in Canada.

Prior to the January 2015 changes, international students had a direct path to permanent residence. Since the implementation of the Express Entry, it has become clear that foreign students, perhaps unintentionally, were negatively impacted.

The Express Entry system requires candidates seeking permanent resident status to file an expression of interest in immigrating to Canada. The Government of Canada then invites certain individuals from the Express Entry pool to apply for permanent residence using a points-based system.

A significant number of points are allocated to individuals with a valid job offer from a Canadian employer or nomination from a Canadian province. In order for the job offer to be valid for the purposes of Express Entry, a positive Labour Market Impact Assessment (LMIA) must be issued.

The requirement for a LMIA has created challenges as many employers are reluctant to pursue this option due to the costly application processing fees and lengthy commitment. Even for those employers who are prepared to pursue the LMIA, the business is often offering a wage lower than the required prevailing wage, due to the position being offered at entry level. In this case, the LMIA application will be refused.

As a result, the launch of Express Entry has had repercussions for international students wishing to remain in Canada after their studies since prior to Express Entry they typically followed a path to permanent residence that did not require their employer to obtain a LMIA.

### **What changes are expected?**

With the recent change of Canadian government leadership, a renewed focus has been placed on how to address this concern and gap in an otherwise successful Express Entry Program. IRCC Minister John McCallum has publicly advocated for a review of the processes and has noted that "International students have been shortchanged by the Express Entry system. They are the cream of the crop, in terms of potential future Canadians."

There is an expectation that the Express Entry requirements may be adjusted to provide some resolution for the challenges that now exist for foreign students. One possibility is an increase in the quotas for provincial programs that allow for the nomination of students. That said, many of the provincial programs open and then close within hours, as recently experienced in January 2016 under the Saskatchewan Immigrant Nominee Program.

Employers and foreign students alike should be heartened by the future opportunities for students and campus hires. For now, it is up to your professional services providers to strategize the best options available.

Foreign students should keep in mind the Electronic Travel Authorization (eTA) is now required. The date of the Study Permit will be the determining factor for whether the student will be automatically issued an eTA, or will need to apply for a new one.

If you have any questions about any of the topics discussed in this newsletter, please do not hesitate to contact one of our professionals.

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For additional information please contact your lawyer at:

**Guberman Garson Segal LLP**

gglawinquires@ggsilaw.com

Bay Adelaide Centre, East Tower  
22 Adelaide Street West, 9<sup>th</sup> Floor  
Toronto, Ontario M5H 0A9  
Canada  
Tel: (416) 363-1234  
Fax: (416) 363-8760

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