



Canadian Association of
Professional Immigration Consultants

L'Association Canadienne des
Conseillers Professionnels en Immigration

**Policy Position Submission presented by the
Canadian Association of Professional Immigration
Consultants, CAPIC, concerning proposed
changes to the Owner/Operator LMIA program**

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About CAPIC

The Canadian Association of Professional Immigration Consultants (CAPIC) is the professional organization representing the interests of Canadian Immigration Consultants. The organization advocates for competency, ethical conduct, and consumer protection in the immigration consulting industry.

CAPIC's mission is to lead, connect, protect, and develop the profession, serving the best interests of its members. It is the only association recognized by the Government of Canada as the voice of Canadian immigration and citizenship consultants.

CAPIC is a major stakeholder consulting with federal and provincial governments and their respective departments (IRCC, CBSA, IRB, ESDC) on legislation, policy, and program improvements and changes.

CAPIC has over 2800 members and is comprised of Regulated Canadian Immigration Consultants and Canadian Immigration Lawyers.

Preamble

CAPIC is submitting this paper in response to ESDC proposed changes to the Owner/Operator LMIA program (Owner/Operator). We have been asked to canvas our members and comment on the recent proposals included in Appendix One.

Executive Summary

The changes, if implemented, will dismantle the Owner/Operator LMIA program.

The Owner/Operator LMIA program is a significant job creation and job retention program, which can help Canada's economy recover from the economic impact of COVID-19.

The Owner/Operator LMIA program should be improved to encourage more participation, not less, with common-sense improvements designed to ensure that job creation and retention are guaranteed.

The Owner/Operator LMIA program relies on third party professionals to validate the applications. This can be strengthened to reduce the burden on ESDC officers.

Respect should be shown to applicants who place significant funds at risk to create or save jobs in Canada, by not imposing unattainable conditions on them.

1. Changes to the Program

Most new or newly acquired businesses necessitate a period of adjustment to acclimate to new markets or new ownership. As a result, managing cash flow is important, and owners of businesses often defer taking significant salaries out of the business in the first year. Instead, they opt to defer income and report this on their balance sheets as retained earnings. Forcing businesses to immediately pay a six-figure salary to a senior manager significantly hinders the success of the business. Requiring a CPA to formally attest to the business's ability to deliver sufficient revenues over time, or that the business has enough assets to support an owner's required income, is ESDC's protection to ensure that the application is sound.

Requiring a business to operate for one year, with active owner involvement, before applying for an LMIA is challenging to achieve under the rules of Canada's immigration system. Only individuals acting as passive investors are allowed in Canada, while being actively involved while not in the country is impossible for many businesses.

No Canadians are being disadvantaged by encouraging individuals from outside the country to bring their capital to Canada to create or save jobs. At the present time, there is record-level unemployment. Small, medium, and large businesses are closing or have closed permanently. Many small business owners who wish to retire cannot find buyers for their businesses and cannot sustain their current spending. They risk losing all their business equity, jeopardizing their retirement funds.

If enacted, after one year, how would an officer expect a business owner to make an objective hiring decision for president of their own company when they are one of the applicants?

Currently, the Owner/Operator program has significant impediments that other streams do not have, such as the requirement that an owner must show sole controlling interest in a company. The program requires a mandatory legal and financial commitment that no other employee assumes. In addition, the requirement that the owner must show substantial, self-created employment for Canadians in order to benefit from an NOC 00XX and receive 200 CRS points is significantly more difficult to accomplish than being offered a role in an already existing company. Furthermore, owners are disadvantaged because they do not

qualify for CEC or CRS points towards their Canadian work experience qualifications, without sufficient rationale.

Conclusion

Requiring owners to meet the proposed restrictions will make investment unattractive and will not help create or save jobs. It will damage Canada's economic recovery. Owner/Operators are already subject to greater requirements than other LMIA applicants.

2. The Owner/Operator LMIA is a Significant Job Creator and Job Retainer Program

As the country confronts the challenges created by COVID-19, the Canadian economy needs investors who are willing to invest and operate businesses that generate employment. The process investors must follow should be rapid enough to allow owners to start their businesses as soon as possible after LMIA approval. The proposed changes will have substantial repercussions on investor desire to invest in the Canadian economy and generate jobs for Canadian citizens and permanent residents. The past few months have had a devastating effect on Canadian businesses, and many have closed for good. The Owner/Operator is one program that attracts many investors, and the proposed changes will not be consistent with Canada's immigration approach.

The most attractive benefit for a potential immigrant who invests in Canada is the possibility to obtain 200 points towards Express Entry eligibility. But to do so they must meet the requirements of being a senior manager under NOC 0013, 0014, 0015 or 0016. The most common NOC is NOC 0015, which requires individuals to work in an organization with multiple employees and to achieve their objectives by directing others, not by performing daily tasks themselves. This is consistent with the duties required for senior managers and executives as part of the Intra Company Transfer work permits.

Therefore, in order to meet the requirements for 200 points towards Express Entry eligibility, an Owner/Operator must create or save multiple jobs, which requires significant economic investment and usually exceeds CAN\$200,000 to CAN\$300,000.

Conclusion

To meet their immigration needs, Owner/Operators must be engaged in a business that is significant and which creates multiple jobs for Canadians.

3. Respect Investors

It is recognized that Canada's immigration system is widely respected and supported by Canadians because it enhances Canada's diversity and has helped the country prosper. Economic immigration is key to our future development as a country, and business immigration has always been a key part of that future. However, since the elimination of the passive investment program (FIIP) and the elimination of the entrepreneur stream, there has been a reduced intake of business immigrants and PNP programs have not made up the shortfalls.

The Owner/Operator LMIA program is helping to fill that void and can keep Canada's immigration system contributing to the country's economy, while enhancing the acceptance of the entire system at a time when jobs and capital are urgently needed.

Conclusion

The Owner/Operator LMIA program is fulfilling a vital need and should be respected as a positive force for economic recovery, especially from the devastating impact of the COVID-19 pandemic.

4. Third-Party Professionals

We support the requirement to have Owner/Operators strengthened by lawyers' and CPAs' attestations about the validity of the proposals, noting any suspected or reported breaches.

Definitions should be made for what qualifies as an "irrevocable commitment". The definition could be similar to the requirements for the Treaty Investor Work Permit and could also be validated by attorneys or accountants, supported by acceptable documentation similar to the Treaty Investor Work Permit, such as legally-binding Purchase Agreements without "escape" clauses.

Conclusion

The integrity of the Owner/Operator LMIA program can be enhanced without placing additional burdens on ESDC officers.

5. Program Improvement Suggestions

Many of these suggestions refer to IRCC, not ESDC.

Short Term:

1. Encourage more, high-quality Owner/Operators by restricting the category to those who can meet the NOC 00XX standard, or impose specific targets such as:
 - preserving five (5) or more jobs of an existing company.
 - creating three (3) or more jobs in the first year of a new company.
2. Allowing Owner/Operators who meet these standards to gain CRS points for Canadian Work Experience.
3. Reducing the language standard to CLB 4, which is consistent with several PNP programs where high fluency is not required to perform the duties.
4. ESDC officers should be trained to validate credentials of lawyers and CPAs who issue required attestations. These professionals can be valuable in minimizing the level of due diligence required from ESDC officers, but they should be able to prevent rubber-stamping of businesses which are marginal or deficient.
5. ESDC officers should be able to approve businesses which are in the process of starting up, which have received a clear and substantial financial commitment from the owner, rather than insisting a business be able to serve customers before getting an LMIA. The definition of “engaging in an ongoing business” should be standardized and include start-up activities after significant funds have been committed.
6. IRCC and CBSA should be instructed to trust the Owner/Operator LMIA decisions by ESDC rather than force applicants to repeat the LMIA process when applying for a work permit, which happens in certain cases.
7. Prospective applicants for Owner/Operator LMIA should be allowed to visit Canada to develop their business concepts the same way that other business immigrants can travel to Canada under R186(a) during the current travel restrictions.
8. Alternatively, if the pandemic persists, IRCC officers should not prejudice work permit applicants who have not been to Canada to research a business if they have been to the country before or have trusted partners in Canada who mitigate their risks.

Long Term:

1. Assign a proper regulatory scheme
2. Provide practicable PDIs
3. Have dedicated, program-specific specialists
4. Turn the program into a proper Business Unit
5. Create program-specific forms
6. The cost of the program can be completely recovered from applicants
7. Can be created through Ministerial Instruction
8. Can be monitored retroactively to ensure compliance, with objectives set for amount of investment or job creation
9. Once conditions are met, move applicant to landing through EE. This could easily be done by creating a policy under Regulation 205(a).

Conclusion

These suggestions would meet public confidence, public policy, and program integrity criteria, and would increase the program's contribution to advancing Canada's economic recovery.

Appendix 1 – ESDC Proposed Changes

Recruitment Efforts

Applicants intending to employ themselves would no longer be exempt from this requirement.

- i.e., in order to ensure that Canadians and permanent residents are given first opportunity at available jobs, all employers would be required to identify an occupational category, and make reasonable efforts to recruit and hire a Canadian or permanent resident for that position, prior to seeking a foreign national (i.e. themselves).

Wages and Working Conditions

Applicants intending to employ themselves would be required to advertise at the prevailing wage for their intended occupation (see above) and would also be required to pay that wage.

Genuineness

In order to ensure that an employer is actively engaged in their business, we propose that the business should be active and operating at the time of the application.

The exact length of time is yet to be determined, but we propose that the business should be in continuous operation in Canada for at least one year while employing at least one full-time equivalent Canadian or permanent resident for that duration. We would exempt Global Talent stream employers from this requirement, with sufficient rationale.

Classification of Occupations

In order to ensure that the job offer is relevant to the type of business being operated and that the wages offered are similar to wages paid to Canadian employees for the same occupation, the employer would be required to assign the correct NOC code to the position that they are seeking to fill. In particular, Program Officers would take extra care to distinguish NOC 00 (senior management positions) from NOC 0 (middle management occupations).

