



THE CANADIAN  
BAR ASSOCIATION  
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BARREAU CANADIEN

December 19, 2023

Via email: [IRCC.ImmRepCoordination-Coordinationderepsenimm.IRCC@cic.gc.ca](mailto:IRCC.ImmRepCoordination-Coordinationderepsenimm.IRCC@cic.gc.ca)

Immigration Program Guidance Team  
Immigration, Refugees and Citizenship Canada  
365 Laurier Avenue West  
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To whom it may concern:

**Re: Category-based draws for Express Entry**

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to recommend improvements to the selection of Express Entry candidates on the basis of categories.

The Canadian Bar Association is a national association of 37,000 members, including lawyers, judges, notaries, academics and law students, with a 120-year-old mandate to seek improvements in the law and the administration of justice. The CBA Section is comprised of over 1,200 lawyers, practicing in all aspects of immigration, refugee and citizenship law and rendering professional advice and representation in the Canadian immigration system to clients in Canada and abroad.

Since the inception of Express Entry in January 2015, immigration lawyers have represented applicants across Canada and internationally by activating Express Entry profiles, submitting electronic applications for permanent residence, and assisting with various processing milestones along the way. CBA Section members represent large, mid-size and small employers who all play a key role in retaining skilled workforce. Our members are also well placed to advise on the CRS and program targets of Express Entry draws.

The CBA Section applauds Immigration, Refugees and Citizenship Canada's innovative approach to drawing Express Entry applicants – particularly, the category-based rounds of invitations since June 2023. These include select healthcare occupations (June 28, 2023), in science, technology, engineering and math (STEM) occupations (July 5, 2023), and three draws targeting those with French-language proficiency (July and August 2023).

This new approach to selecting Express Entry applicants effectively responds to labour market needs. This letter offers recommendations to stabilize and increase the predictability of Canada's mainstay intake system for economic immigration applicants.

## **Predictability and Consistency**

One benefit of the federal Express Entry system is in enabling a fairly high level of certainty and predictability for individual applicants, their families and Canadian employers whose workers rely on Express Entry as their pathway to permanent residency (PR) and on bridging work permits during PR processing. Foreign nationals overseas with lower comprehensive ranking scores (CRS) are often advised to increase their score by obtaining Canadian post-secondary education, making them eligible for a post-graduate work permit, or by acquiring at least one year of high-skilled Canadian work experience.

We recommend standardizing minimum eligibility criteria for Canadian Experience Class (CEC), Federal Skilled Worker (FSW) and Federal Skilled Trades (FST) to allow candidates to enter the Express Entry pool on meeting minimum eligibility for any one of these classes. This would facilitate candidates' assessment of their competitiveness and likelihood of being drawn.

Prior to the COVID-19 pandemic, Invitations to Apply (ITA) rounds were predictable and generally took place every other week. Candidates could create, recreate or update their profiles with a reasonable belief that invitation rounds would occur with some regularity.

International students and foreign nationals on post-graduation work permits rely on Express Entry, under CEC, as their most viable pathway to PR. The last CEC draw took place in September 2021, and no single CEC-focused draws have occurred since.

Candidates and their Canadian employers need to know how long PR applications take and cost, and what additional steps will be required to maintain temporary status in Canada. Notably, it may impact whether an employer is willing to support a candidate with a Provincial Nominee Program (PNP) application when candidates wish to reside in Canada, and where global or national employers should locate their workforce.

### **Invitations to Apply in "No Program Specified" draws**

The minimum CRS needed for an ITA increased significantly (into mid-500's) and remained at least in the high 480's until June 2023. Candidates had some predictability and a sense of whether they would receive an ITA and should pursue Canadian PR via Express Entry.

While long-term effects of category-based Express Entry draws will be evident in the future, ITA data for the past two months shows that targeting certain occupations has the effect of forcing up the CRS cut-off for "No Program Specified" draws. Only young candidates (around age 29) with nearly perfect language scores, high levels of post-secondary education, and multi-year qualifying work experience are likely to receive a "No Program Specified" ITA with a CRS cut-off above 500.

To capture a diverse group of candidates with high core/human capital factors (age, education level, official languages proficiency and Canadian work experience), we recommend that category-based draws not erode the ability of lower Training, Education, Experience and Responsibilities (TEER) candidates to get an ITA. The National Occupational Classification (NOC) codes included in a new category-based draw presumably reflect Canadian labour market needs as evidenced by the Canadian Occupational Projection System (COPS), as well as survey data from stakeholders.

The importance of giving TEER 3 candidates the possibility to get drawn in a round of invitations is well represented in the Healthcare occupations category, in which there are 35 eligible NOCs. Of those 35 NOCs, 20 are TEER 1, 11 are TEER 2, and only 4 are TEER 3. Surgeons, Dentists and family physicians are in TEER 1 and will likely have higher CRS scores because of their level of education.

Medical lab assistants and nurse aides are in TEER 3 and usually have lower education scores and thus lower CRS. Yet, they meet a significant labour need.

This higher threshold also means that many candidates will need to reassess their competitiveness for Express Entry and explore PNP options to boost their CRS points or pivot to a non-Express Entry program. Applying for PR through a PNP generates additional costs and delays, as well as additional eligibility requirements for PR applications. This can result in Canadian employers losing critical talent. PNP requirements may entice Express Entry candidates to leave positions at non-eligible small companies for job offers with larger well-established companies that are PNP-eligible and support PNP applications. This may slow the growth and potential of innovative and start-up companies across Canada.

**The following** recommendations for "No Program Specified" draws will help maintain program integrity and restore predictability for individuals, their families, and Canadian employers. It will also crystallize a pathway to PR for candidates who studied or worked in Canada.

1. IRCC continue to publish the lists of targeted occupations and NOC categories for the year ahead and disclose the provenance of the data (Canadian Occupational Projection System and stakeholders survey data).
2. IRCC actively include lawyers in its consultations with stakeholders, as they are uniquely able to offer insight from applicant and employer perspectives.
3. IRCC publicize its overall yearly target allocations for each category under Express Entry (for example, that STEM should comprise 28-31%, francophone 11-15%, healthcare 9-12%, trades 3-4%, transport 1-2%, and agriculture 1-2%).
4. IRCC carefully choose NOCs to be included in each category and the timing of back-to-back draws in the same category.
5. IRCC use another mechanism to enable candidates at lower TEER bands and with lower CRS to receive an ITA. For example, in a healthcare-based draw, physicians would get almost all the ITAs at the minimum CRS of 460-plus, but nursing aides would not reach this CRS threshold;
6. IRCC better coordinate with provinces and territories to avoid waste of government resources and prevent candidates' frustration over having applied to a PNP and then getting an ITA under a category-based draw through Express Entry (for example, Ontario Immigration Nominee Program (OINP) and the EE Francophone category specific draws); and
7. IRCC hold a CEC-specific round of invitations, including PNP rounds, frequently and on a predictable basis (for example, at least once per year), or implement another mechanism to capture candidates with Canadian education and work experience.

### **Coordination with PNPs**

We recommend that IRCC coordinate with PNPs across Canada to minimize duplication in the PR options available to foreign nationals. Notably, the CRS threshold required for the Express Entry French language proficiency category is substantially lower than previous program-based rounds. Candidates with French language skills who applied to a PNP to support their PR application may now no longer require a nomination. For example, Alberta Advantage Immigration Program (formerly known as AINP) and OINP applicants with French language skills may decide to withdraw their PNP applications, and PNP streams that facilitate applicants with French language skills will potentially no longer be utilized. Similarly, several PNPs target foreign workers in technology and healthcare occupations. If workers in these occupations are able to advance PR applications through the Express Entry system without a PNP nomination, the PNP streams may become unnecessary and underutilized.

## **PR opportunities for those with Canadian education and/or work experience**

The CBA Section continues to identify a gap in Express Entry rounds as it relates to the international student population in Canada. While we applaud the focus on in-demand occupations, the international student population continues to be overlooked in the Express Entry system. This gap has been further magnified with the introduction of the category-based draws, as well as the infrequent general rounds and CEC draws which have also seen an increase in CRS score cutoff. As part of the 2022-2023 IRCC Departmental Plan, the department was to explore expanding pathways to permanent residence for international students through the Express Entry system. With the introduction of the category-based draws, we have yet to see an update to the system that adequately addresses the international student population.

International students, once transitioned to post-graduate work permit holder status, rely on obtaining Canadian work experience to earn additional CRS points to be competitive in the Express Entry system under CEC. For example, an individual would earn a CRS score of 474 points based on these factors:

- Age - 23
- Education - Canadian Bachelor's degree
- English language test results – Canadian Language Benchmark 10-12
- Canadian work experience - 1 year
- Foreign work experience - 0
- \*Job Offer - 0<sup>1</sup>

Since the introduction of the category-based draws, two general rounds of invitations were issued on July 4 and July 11, with a minimum cutoff score of 511 and 505 respectively. The CRS cutoff remains out of reach for many post-graduate work permit holders, except for draws focused on healthcare occupations and French language proficiency. Further, the unpredictability of ongoing general and CEC rounds of invitations creates uncertainty for the international student and post-graduate work permit population, who have invested significant funds to study in Canada, and contribute to the economy as working foreign nationals who have gained over one year of full-time work experience in Canada.

This also speaks to the benefits of frequent and predictable general rounds of invitations and program-specific rounds of invitations, particularly CEC. It will increase the long-term status predictability for international students and post-graduate work. One recommended approach to reduce this gap for the international student and post-graduate work permit holder population, is to permit job offer points for post-graduate work permit holders who have earned at least one year of Canadian work experience, and have an ongoing job offer valid for at least one year once permanent residence status is obtained. Alternatively, we recommend expanding the category-based draws to include draws specifically targeted at those who have earned a Canadian post-secondary education credential.

## **Importance of engaging immigration lawyers**

In June and July 2023, IRCC conducted several information sessions titled “Changes to the Express Entry System: Category-based Selection.” The presentation addressed upcoming program modifications to implement draws based on French-language proficiency and priority occupations

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<sup>1</sup> As per current program requirements for having a valid job offer, post-graduate work permit holders do not earn additional job offer points.

to address language shortages in the country. The presentation targeted employers across Canada, and legal counsel were able to attend upon contacting IRCC organizers separately.

The CBA Section applauds IRCC's efforts to consult with stakeholders on the implementation of category-based selection and to develop these categories. In addition to consulting with employers, we encourage IRCC to engage with the CBA Section as it can uniquely share comprehensive, evidence-based and multifaceted feedback as the voice of the profession.

### **Conclusion**

We are grateful for this opportunity to share our recommendations, and trust that that these will be helpful to the department. As always, we would be pleased to further discuss at your convenience.

Yours truly,

*(original letter signed by Véronique Morissette for Gabriela Ramo)*

Gabriela Ramo  
Chair, CBA Immigration Law Section