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THE CANADIAN EXPERIENCE CLASS: DELIVERING AS PROMISED

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I. INTRODUCTION

On September 5, 2008, CIC published a News Release entitled “Canadian Experience Class now open for business.” The News Release announced that acceptance of applications under the CEC would start on September 17, 2008. It provided in part:

With the Canadian Experience Class fully in place, Canada will be more competitive in attracting and retaining individuals with the skills we need,” said Minister Finley. “It, along with other recent improvements to modernize the immigration system, will go a long way in bringing Canada in line with its global competitors while further spreading the benefits of immigration into smaller centres across Canada.

The Canadian Experience Class is a new avenue of immigration for certain temporary foreign workers and foreign student graduates with professional, managerial and skilled work experience. Unlike other programs, the Canadian Experience Class allows an applicant’s experience in Canada to be considered a key selection factor when immigrating to Canada.

This paper explores how the CEC came to be, provides an overview of the legal framework of the new class, discusses the practicalities of preparing and submitting a CEC application and includes a chart that compares the CEC to other Economic Classes and suggests when one category should be considered over the others.¹ The intention is to provide a comprehensive source to refer to when preparing CEC applications, ranging from the straightforward to those containing unusual facts.

II. INTENT OF CEC

The Regulatory Impact Analysis Statement (RIAS) concerning the CEC was published in the Canada Gazette on August 9, 2008 in relation to the Regulations Amending the Immigration and Refugee Protection Regulations (Canadian Experience Class).²

The RIAS provides insight regarding the objectives and intended benefits of the CEC, including:

- “[B]uilding a more responsive and attractive immigration system” by supporting “labour force growth and bringing in the skilled workers needed by employers and communities.”
- “The CEC aims to facilitate the transition from temporary to permanent residence for certain temporary foreign workers and foreign students, thus helping to attract and retain qualified workers.” The CEC has two streams: (a) the Temporary Foreign Worker Stream; and (b) the Post-Graduation Stream.

¹ see Appendix A.

² Vol. 142, No. 32 – August 9, 2008.

- “Several positive qualitative and quantitative impacts are expected, particularly in terms of improved business competitiveness, reduced immigrant integration and settlement costs, and streamlined case processing and client service.”

The RIAS explains that the Federal Skilled Worker (FSW) Class is the main avenue for economic immigrants to Canada, but this avenue has shortcomings. For example, it is hampered by long processing times due to backlogs and successful (non-temporary foreign worker) applicants immigrate mainly to the three major metropolitan areas, not to outside communities that need skilled immigrants.

At the same time, the Temporary Foreign Worker Program is increasing in popularity by employers, including those outside the three major metropolitan areas, and temporary foreign workers are staying in Canada longer. The CEC capitalizes on these trends by facilitating foreign workers attaining permanent resident status. “Evidence shows that immigrants with Canadian study and/or work experience and who have good language skills integrate into the Canadian labour market more successfully than immigrants without such characteristics.” It is on this basis that R87.1(1) prescribes the CEC “as a class of persons who may become permanent residents on the basis of their experience in Canada.” CEC applicants are expected to require fewer settlement services. Foreign credential recognition and re-training will be less of an issue since applicants will have Canadian credentials. Note that, pursuant to R87.1(1), prospective applicants intending to reside in Quebec can not resort to the CEC.

The CIC website³ summarizes the requirements of the CEC nicely:

1. plan to live outside the province of Quebec;
2. be either:
 - (a) a temporary foreign worker with at least two years of full-time (or equivalent) skilled work experience in Canada, or
 - (b) a foreign graduate from a Canadian post-secondary institution with at least one year of full-time (or equivalent) skilled work experience in Canada;
3. have gained your experience in Canada with the proper work or study authorization; and
4. apply while working in Canada – or – within one year of leaving your job in Canada.

The CEC selects “on a pass/fail model, and not a points system, as under the FSW Class. The selection criteria to qualify for the class is tied to determinants of successful labour market integration: possession of a Canadian credential (only in the case of foreign graduates), Canadian skilled work experience, and official language proficiency.” The RIAS justifies language requirements for graduates by wanting to prevent situations where graduates have inadequate language skills.

The RIAS explains how suggestions made by stakeholders were integrated into the IRPR, including “removing the universal language testing requirement [for skilled tradespersons], relaxing the language requirements to attract skilled trades, eliminating minimum levels of education in the Temporary Foreign Worker Stream and providing greater flexibility in

³ <http://www.cic.gc.ca/english/immigrate/cec/apply-who.asp>

interviews overseas.” These suggestions were made by the CBA Immigration Law Section National Executive.

The News Release “Canadian Experience Class now open for business” mentions another revision that will increase the popularity of the CEC:

The final implementation of the Canadian Experience Class reflects what was originally proposed on August 9, 2008. The main difference is that those who have left Canada, but otherwise meet the requirements as workers or graduates, will be eligible to apply provided they do so within one year of leaving their job in Canada. Under the proposal, CIC had suggested that applicants would be required to have temporary resident status and be present in Canada to be eligible to apply. The Government of Canada has since chosen to cast a wider net to avoid missing those with the Canadian experience we want, through residency restrictions.

The lower Canadian Language Benchmarks (CLB) for NOC B is intended to address “a key objective of the CEC,” that is, to “facilitate the transition for skilled tradespersons (mostly in NOC B occupations) working in demand occupations.”

R70(2)(b) adds the Canadian Experience Class to the Economic Class, along with the Federal Skilled Worker Class, the Quebec Skilled Worker Class, the Provincial Nominee Class, the Investor Class, the Entrepreneur Class, the Self-employed Persons Class and Transitional Classes.

The RIAS makes reference to provinces and territories still being able to nominate temporary foreign workers and international graduates before they would be eligible under the CEC. This is an indirect reference to CIC believing that the CEC will not cannibalize Provincial Nominee Class applications. Some CIC officials believe that in this difficult economic climate, the Provincial Nominee Class will be more affected than the CEC.

The RIAS provides that the overall immigration levels are expected to remain the same at least during the first year. CEC applications count toward Economic Class targets. Estimates for the CEC are 30,000-35,000 applications a year, with 25,000 approved applications a year.

III. CONSIDERATIONS WHEN PREPARING A CEC APPLICATION

The following are comments from the CIC website⁴ that potential applicants would read:

- In the introduction, it is said that (emphasis added) “You should have knowledge of English or French.” “Should have knowledge” - this is potentially misleading since language proficiency is one of the prerequisites for the CEC.
- “Applying to stay in Canada permanently in your case is simple. You can do this under the Canadian Experience Class. All the guides, information and forms you need to apply are included here.” These statements suggest that professional assistance is not necessary, so unless the practitioner is the one recommending the CEC to the prospective

⁴ <http://www.cic.gc.ca/english/immigrate/cec/index.asp>

applicant, the CEC may not generate much additional work for immigration counsel, especially compared to alternative categories like the Provincial Nominee Class.

These statements suggest that professional assistance is not necessary. Nonetheless, there are a number of policies that lay applicants will not be aware of or understand that can make the difference between deciding to apply or not or between the application being approved or refused.

Due to much of R87.1⁵ and the corresponding immigration policies applying to both the Temporary Foreign Worker and Post-Graduation Streams, many of the considerations when preparing a CEC application under either stream are the same. This section of the paper discusses legislation and policies applicable to both Streams then those applicable to each stream.

A. Practice Points Applicable to Both Streams

The legislation and policies⁶ that set out the requirements for both Streams are as follows (emphasis added):

Member of the class

87.1(2) A foreign national is a member of the Canadian experience class if

(a) they

(i) have acquired in Canada within the 24 months before the day on which their application for permanent residence is made at least 12 months of full-time work experience, or the equivalent in part-time work experience, in one or more occupations that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix, and have acquired that work experience after having obtained

(A) a diploma, degree or trade or apprenticeship credential issued on the completion of a program of full-time study or training of at least two years' duration at a public, provincially recognized post-secondary educational or training institution in Canada,

(B) a diploma or trade or apprenticeship credential issued on the completion of a program of full-time study or training of at least two years' duration at a private, Quebec post-secondary institution that operates under the same rules and regulations as public Quebec post-secondary institutions and that receives at least 50 per cent of its financing for its overall operations from government grants, subsidies or other assistance,

(C) a degree from a private, provincially recognized post-secondary educational institution in Canada issued on the completion of a program of full-time study of at least two years' duration, or

(D) a graduate degree from a provincially recognized post-secondary educational institution in Canada issued on the completion of a program of full-time study of at least one year's duration and within two years after obtaining a degree or diploma from an institution referred to in clause (A) or (C), or

(ii) have acquired in Canada within the 36 months before the day on which their application for permanent residence is made at least 24 months of full-time work experience, or the equivalent in part-time work experience, in one or more occupations that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix; and

- The work experience can be comprised of multiple part-time jobs.

⁵ see Append B for the full, clean copy of R87.1.

⁶ OP 25 "Canadian Experience Class."

- Section 6.1 “National Occupation Classification (NOC)” notes that the applicant does not need to meet the “Employment Requirements” for the particular NOC to receive credit for work experience under the given occupation.
- Regarding providing proof of the work experience, if a confirmation of employment letter is not available, CPC-Buffalo will consider alternative evidence. Section 9.11 “Work experience” does not seem to touch on this. Examples could conceivably include situations where the prior employer has gone out of business so the employer can not provide the letter, or the employment ended badly so the employer will not provide the letter. Consider providing the following along with a detailed explanation:
 1. if applicable, a news release or news article about the employer going out of business;
 2. the offer of employment letter,
 3. a reference letter from the prior supervisor or a statutory declaration from a prior co-worker;
 4. the formal job description; or
 5. proof of remuneration by way of paycheque stubs or bank account records evidencing deposits.

(b) they have had their proficiency assessed in the English or French language by an organization or institution designated under subsection (4), or have provided other evidence in writing of their proficiency in either language, and have obtained proficiencies for their abilities to speak, listen, read and write that correspond to benchmarks, as referred to in Canadian Language Benchmarks 2000 for the English language and Niveaux de compétence linguistique canadiens 2006 for the French language, of

(i) in the case of a foreign national who has acquired work experience in one or more occupations that are listed in Skill Type 0 Management Occupations or Skill Level A of the *National Occupational Classification* matrix,

(A) 7 or higher for each of those abilities, or

(B) 6 for any one of those abilities, 7 or higher for any other two of those abilities and 8 or higher for the remaining ability, and

(ii) in the case of a foreign national who has acquired work experience in one or more occupations that are listed in Skill Level B of the *National Occupational Classification* matrix,

(A) 5 or higher for each of those abilities, or

(B) 4 for any one of those abilities, 5 or higher for any other two of those abilities and 6 or higher for the remaining ability.

- Section 9.4 “Evidence of language proficiency” notes that if updated language test results are provided while the application is processing, the officer will use the most recent results, not necessarily the highest score.
- Further to Section 9.7 “International English Language Testing System (IELTS),” when equalizing test results, scores are rounded down not up. For example, if one of the test scores is 5.5, the CLB Level is 5, not 6.
- Further to R87.1(2)(b)(ii) regarding persons applying on the basis of having work experience in a Skill Level B occupation and therefore only needing to meet the lower language benchmarks, CPC-Buffalo still encourages applicants to take a language test.

The increased certainty will benefit the applicant and assist the officer processing the application.

- Section 9.10 “Integrity concerns on language proficiency during an interview” provides that if “significant discrepancies become evident between claimed (i.e., test results) and actual language proficiency” at an interview, the officer is to attempt to verify the test score and integrity of the testing procedures in the particular case:
 - (a) The applicant may be recommended to conduct a retest “at the testing agency’s expense and with visa office supervision.” If the applicant refuses the retest, the application will be refused “for misinterpretation given the discrepancy between the test scores and the actual language abilities.”
 - (b) If the officer can “establish fraud or malfeasance in the testing procedures,” the application will be refused for misrepresentation.

Application

(3) For the purposes of subsection (2),

(a) full-time work is equivalent to at least 37.5 hours of work per week;

- Section 6.4 “Full-time work” expands R87.1(3)(a)’s 37.5 hours a week to equal 1950 hours a year (37.5 hours per week x 52 weeks per year). It will be interesting to see whether applicants who have worked less than 1950 hours per year due to employers reducing hours in order to reduce labour costs in this tough economy will be considered to meet this requirement.

(b) any period of self-employment or unauthorized work shall not be included in calculating a period of work experience;

- Work experience under work-permit exempt categories is recognized, for example:

(a) clergy under R186(l) – the occupation is high skill, NOC 4154; and

(b) athletes under R186(h) – the occupation is high skill, NOC 5251.

- Work experience gained under LMO-exempt WP categories is recognized, such as under the Post-graduation Employment (C43), Working Holiday Program and Student Working Abroad Program (SWAP) (C21), and Spouses and Common-law Partners of Skilled Workers (C41) (except self-employed work) categories.

- As per discussions with Mr. Burke Thornton, Consul (Immigration), CPC-Buffalo, issues may arise where the CEC application reveals that the married couple has divorced (or perhaps even where the common-law partnership dissolved) and the applicant requires the subsequent work experience to qualify for the CEC. It is arguable that this subsequent work experience will not be recognized since the work permit was issued based on the marriage (or common-law partnership).

(c) the foreign national must have had temporary resident status during their period of work experience and any period of full-time study or training;

- Section 9.2 “Status” confirms, further to R87.1(3)(c), that persons applying must have always maintained temporary status while in Canada. This applies to temporary status while accumulating the work experience or completing the post-secondary education, while the CEC application is in process and when the applicant is landing. Refugee claimants in Canada and undocumented workers are not eligible for the CEC. Applicants who have not maintained their temporary status while in Canada may be found to be inadmissible.

(d) the foreign national must have been physically present in Canada for at least two years of their full-time study or training;

...

(g) in the case of a foreign national whose work experience is referred to in both subparagraphs (2)(b)(i) and (ii), the foreign national must obtain a proficiency in the English or French language that corresponds to the benchmarks required for the skill type, as set out in subparagraph (2)(b)(i) or (ii), in which the foreign national has acquired most of their work experience.

Conclusive evidence

(5) The results of an assessment of the language proficiency of a foreign national by a designated organization or institution and the correlation of those results with the benchmarks in accordance with subsection (4) are conclusive evidence of the foreign national’s proficiency in an official language of Canada for the purposes of this section.

- Section 9.6 “Approved testing organizations” provides that, further to R87.1(5) regarding results of a language test administered by a designated testing organization being “conclusive evidence” of language proficiency, an officer “cannot consider any claim made by the applicant that the test results are an inaccurate reflection of their true abilities.” In other words, a submission refuting the test results will not be considered.
- Section 9.9 “Other written evidence” provides that “self-serving declarations” and “third-party testimonials” will not be considered conclusive. If these types of documents are provided, the applicant should not be surprised if he/she receives a letter suggesting that he/she take a designated language test.

(b) they have had their proficiency assessed in the English or French language by an organization or institution designated under subsection (4), or have provided other evidence in writing of their proficiency in either language, and have obtained proficiencies for their abilities to speak, listen, read and write that correspond to benchmarks, as referred to in Canadian Language Benchmarks 2000 for the English language and Niveaux de compétence linguistique canadiens 2006 for the French language, of

(i) in the case of a foreign national who has acquired work experience in one or more occupations that are listed in Skill Type 0 Management Occupations or Skill Level A of the *National Occupational Classification* matrix,

(A) 7 or higher for each of those abilities, or

(B) 6 for any one of those abilities, 7 or higher for any other two of those abilities and 8 or higher for the remaining ability, and

(ii) in the case of a foreign national who has acquired work experience in one or more occupations that are listed in Skill Level B of the *National Occupational Classification* matrix,

(A) 5 or higher for each of those abilities, or

(B) 4 for any one of those abilities, 5 or higher for any other two of those abilities and 6 or higher for the remaining ability.

Regarding non-accompanying family members, fortunately the Document Checklist (IMM 5610) allows for the applicant to provide a statutory declaration confirming his/her intention to

immigrate without the particular family member(s) and that he/she understands that the implication is that the family member(s) can not be sponsored by the applicant in the future.

As with other permanent residence classes, police certificates can be provided after the initial application is submitted, allowing the application to be submitted sooner.

B. The Post-Graduation Stream

The legislation and policies⁷ applicable to the Post-graduation Stream are as follows (emphasis added):

Member of the class

87.1(2) A foreign national is a member of the Canadian experience class if

(a) they

(i) have acquired in Canada within the 24 months before the day on which their application for permanent residence is made at least 12 months of full-time work experience, or the equivalent in part-time work experience, in one or more occupations that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix, and have acquired that work experience after having obtained

(A) a diploma, degree or trade or apprenticeship credential issued on the completion of a program of full-time study or training of at least two years' duration at a public, provincially recognized post-secondary educational or training institution in Canada,

(B) a diploma or trade or apprenticeship credential issued on the completion of a program of full-time study or training of at least two years' duration at a private, Quebec post-secondary institution that operates under the same rules and regulations as public Quebec post-secondary institutions and that receives at least 50 per cent of its financing for its overall operations from government grants, subsidies or other assistance,

(C) a degree from a private, provincially recognized post-secondary educational institution in Canada issued on the completion of a program of full-time study of at least two years' duration, or

(D) a graduate degree from a provincially recognized post-secondary educational institution in Canada issued on the completion of a program of full-time study of at least one year's duration and within two years after obtaining a degree or diploma from an institution referred to in clause (A) or (C), or

- The work experience does not need to be related to the Canadian education.
- Section 9.11 “Work experience” provides that the work experience must have been acquired after obtaining the Canadian educational credential. Pre-graduate work experience is not recognized, including “work performed under the Off-Campus Work Permit Program or on a co-op work term.”
- Section 6.3 “Full-time studies (education requirement)” provides that “full-time studies” is not defined to allow flexibility. “The definition that will apply is the one used by the post-secondary institution which issued the educational credential.” If it is unclear whether the educational program to be relied on is full-time, provide supporting documentation such as extracts from the educational institution’s website or a letter of confirmation from the educational institution.

⁷ OP 25 “Canadian Experience Class.”

- Further to R87.1(2)(a)(i)(A) to (D) regarding private, provincially recognized post-secondary educational institution[s], a list of recognized institutions is not available and there is no plan to publish one. As of February 20, 2009, only one application had been refused because the applicant graduated from a post-secondary educational institution that was not recognized.
- Section 9.12 “Education requirement for Post-Graduation Stream” provides that:
 - (a) an academic year is equal to “at least eight months excluding scheduled breaks, such as summer holidays”; and
 - (b) if the applicant is claiming eligibility based on a one-year graduate degree pursuant to R87.1(2)(a)(i)(D), he/she must also have a “previous qualifying post-secondary educational credential (at least eight months), within the two years preceding the completion of the graduate program.” Appendix B provides further sample scenarios;
...
 - (e) any period during which the foreign national was engaged in a full-time program of study or training in English or French as a second language — and any period of full-time study or training in respect of which study or training in English or French as a second language amounted to most of the full-time study or training — shall not be included in calculating the period of full-time study or training;
- Section 9.12 “Education requirement for Post-Graduation Stream” provides that the reference in R87.1(3)(e) to ESL/FSL being “most of the full-time study or training” is to be interpreted literally as “more than half of the program.” A submission that the ESL or FSL program was not “most” of the studying or training should therefore focus on the number of hours engaged in such studying or training in relation to the total number of hours studying or training.
 - (f) any period of study or training during which the foreign national was a recipient of a Government of Canada scholarship or bursary, or participated in an exchange program sponsored by the Government of Canada, a purpose or condition of which was that the foreign national return to their country of origin or nationality on completion of their studies or training shall not be included in calculating the period of full-time study or training; and

C. The Temporary Foreign Worker Stream

The legislation and policies⁸ applicable to the Post-graduation Stream are as follows (emphasis added).

Member of the class

87.1(2) A foreign national is a member of the Canadian experience class if

...

(ii) have acquired in Canada within the 36 months before the day on which their application for permanent residence is made at least 24 months of full-time work experience, or the equivalent in part-time work experience, in one or more occupations that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix; and

(b) they have had their proficiency assessed in the English or French language by an organization or institution designated under subsection (4), or have provided other evidence in writing of their proficiency in either

⁸ OP 25 “Canadian Experience Class.”

language, and have obtained proficiencies for their abilities to speak, listen, read and write that correspond to benchmarks, as referred to in Canadian Language Benchmarks 2000 for the English language and Niveaux de compétence linguistique canadiens 2006 for the French language, of

(i) in the case of a foreign national who has acquired work experience in one or more occupations that are listed in Skill Type 0 Management Occupations or Skill Level A of the *National Occupational Classification* matrix,

(A) 7 or higher for each of those abilities, or

(B) 6 for any one of those abilities, 7 or higher for any other two of those abilities and 8 or higher for the remaining ability, and

(ii) in the case of a foreign national who has acquired work experience in one or more occupations that are listed in Skill Level B of the *National Occupational Classification* matrix,

(A) 5 or higher for each of those abilities, or

(B) 4 for any one of those abilities, 5 or higher for any other two of those abilities and 6 or higher for the remaining ability.

Application

(3) For the purposes of subsection (2),

...

(b) any period of self-employment or unauthorized work shall not be included in calculating a period of work experience;

- Regarding intra-company transferees, it is not problematic if the applicant continued to be paid by the foreign enterprise. The important point is that the applicant was physically working in Canada.

IV. CIC PROCESSING

Note the following when advising the client on how the processing of the CEC application will likely proceed or when trying to deal with processing issues:

- The target is eight month processing, similar to that for the Provincial Nominee Class.⁹
- Since the introduction of the CEC, CPC-Buffalo has set up a distinct address in Fort Erie, ON to distinguish such applications from applications submitted under other classes and facilitate priority processing.¹⁰ The address is indicated in the Instruction Guide (IMM 5609).
- The RIAS commits CIC to “reaffirm the objectives of the dual intent provision to visa officers in an operational bulletin prior to the implementation of CEC.” Hopefully this will make it less difficult to obtain temporary visas while the permanent residence application is pending. Mr. Burke Thornton is in support of allowing dual intent.¹¹ For example, he has spoken with CPC-Vegreville, which confirmed that it is willing to extend temporary resident status while a CEC application is pending.

⁹ From CEC presentation by Mr. Burke Thornton, Consul (Immigration), CPC-Buffalo, and Brendon Rafferty, Senior Policy Program Advisor, National Headquarters, in Vancouver on November 4, 2008.

¹⁰ As per discussions with Mr. Burke Thornton, Consul (Immigration), CPC-Buffalo, and Ms. Heidi Smith, Director, Permanent Resident Policy and Programs Development Division, Immigration Branch, CIC, on February 20, 2008.

¹¹ *Ibid.*

- Section 11 “Procedure: Approving the application” provides that a successful applicant living in Canada with valid status can either land at a port of entry or at the local CIC (the latter requires an appointment).
- Operationally, CPC-Buffalo has one staff screening the applications and one officer processing them.¹² Having dedicated staff facilitates the development of expertise and consistent processing of applications. This was still true as of February 20, 2009. If the volume of applications increases, this team is expected to grow. It is possible that applications could be distributed to US satellite offices in time.
- Section 5.2 “Cost recovery fee and Right of Permanent Residence Fee (RPRF)” of OP 25 indicates that “initial screening” starts with “language and security.” For an applicant to be eligible for a refund of the cost recovery fee, the request to withdraw must be made before such screening starts.
- Section 5.2 also provides that applications can be in process in more than one category, but eventually one category will need to be chosen for purposes of issuing the permanent resident visa.
- Section 5.2 further explains that if an applicant has a permanent residence application under the FSW Class pending, a new CEC application must be submitted; one application can not be assessed under two different economic categories. It is probably preferable to withdraw the FSW application so that the documentation can be recycled when assembling the CEC application, rather than having to obtain new items like originally signed application forms, immigration photographs, processing fees, police certificates, etc. If the initial assessment of the FSW application has not been conducted, the application can be withdrawn and the processing fees are to be refunded. If the initial assessment has been conducted, the processing fees will not be refunded.

Even if the FSW application is pending at CPC-Buffalo (as opposed to another visa office), a new CEC application must be submitted.¹³ CPC-Buffalo will not hold onto the FSW application and wait for the additional required items (such as the Schedule 8 and further proof of Canadian work experience). The reason is that it is administratively easier to ensure consistency and to facilitate the target processing time if the onus is placed on the applicant to provide the complete application to CPC-Buffalo, rather than CPC-Buffalo waiting for the additional items.

- Section 8.1 “Receiving the application” provides that “an application” pursuant to R10 must include all the application forms and schedules, the applicable fees (the cost recovery fees) and proof of official language proficiency. An application submitted without proof of language proficiency is considered incomplete and therefore is to be returned, consistent with OP 1 “Procedures” Section 7.3 “What is an application?” If the

¹² *supra* note 7.

¹³ *supra* note 7.

application is returned, the application is not date-stamped and no B file is created in CAIPS so no lock-in has been achieved.

- Section 8.2 “Putting an application into process” provides that when an application is submitted to the appropriate visa office abroad pursuant to R11(1), the visa office will screen the application for completeness then transfer the application to CPC-Buffalo by private courier, not diplomatic bag, to save time.
- Section 8.3 “Acknowledging receipt” provides that the visa office abroad will issue the acknowledgement of receipt letter. This letter will advise that, among other things, the application has been transferred to CPC-Buffalo.
- Section 10.1 “Pass/Fail test” provides that CEC selection is based on a pass/fail system. There is no substituted evaluation. If the officer is unable to make a determination, based on “lack of information or documentation” or “doubts as to the legitimacy of the documents submitted,” the officer will either request, in writing, specific information or documentation or ask for a personal interview.
- Section 10.2 “Use of interviews” provides that “overseas visa offices may be called upon to conduct interviews,” for example to interview family members.

The RIAS suggests that when interviews are required, CPC-Buffalo may be willing to have them conducted by other visa offices in the United States so that applicants (for example, in western Canada) are not required to travel as far. According to CPC-Buffalo, as of February 20, 2009, no interviews had been scheduled for other visa offices in the US.

The RIAS provides that CIC will accommodate applicants convoked for an interview who are unable to obtain US visas, such as conducting the interview at the visa office that services the applicant’s country of residence. An alternative may be conducting the interview at the local Canadian CIC office. The interview results would then be provided to CPC-Buffalo.

However, it is CPC-Buffalo’s view that the onus is on the applicant to make best efforts to attend the interview in Buffalo.¹⁴ The applicant should advise CPC-Buffalo right away if he/she knows that obtaining a US visa will be a problem. Immigration counsel must keep in mind that if the applicant is convoked for an interview, this means that the immigration officer has a concern about the application that he/she wishes to investigate.

Again, according to CPC-Buffalo, as of February 20, 2009, no interviews had been scheduled for other visa offices.

- Section 10.2 “Use of interviews” also provides that visa offices will “undertake both targeted and random verifications to detect and deter fraud.”

¹⁴ *supra* note 7.

- CPC-Buffalo will be conducting quality assurance, both targeted and random, to help determine potential risks. It will ask CIC colleagues in Canada to verify applicants' education and employment relationships. For example, non-arm's length relationships between the applicant and the employer will be scrutinized to ensure that the Skill Level of the occupation has not been exaggerated.
- The CEC team is analyzing recurring issues with the applications.¹⁵ They can seek input from CIC in Ottawa when issues arise that they do not feel comfortable addressing on their own. Thus far, NHQ in Ottawa and CPC-Buffalo are pleasantly surprised how few issues have arisen.

The following are CEC statistics as of February 20, 2009:¹⁶

- 1003 CEC applications had been received. Only a handful were forwarded from overseas visa offices.
- Of the 1003 applications received, decisions had been made on 698 and permanent resident visas had been issued on 67 (meaning that the processing time was five months or less).
- Of the 1003 applications received, "several dozen" have been refused, the majority of which did not meet the required length of work experience. For example, students are applying before they have one year of work experience, hoping that by the time the application is processed they will have the requisite experience. Since there is no substituted evaluation, further to R10(1)(c), "all information and documentation required by" the legislation must be provided in the application so the requirements must be met at the time the application is submitted.
- Of the 1003 applications received, 765 were in the Post-Graduation Stream. Students dominating the CEC may be due in part to marketing and because prospective applicants may choose the FSW Class instead of waiting longer to qualify for the CEC.

V. CONCLUSION

While the CEC may appear on its face to be a straightforward Economic Class category, as explained above, there are still nuances that lay applicants will not be aware of or understand. There are opportunities for immigration counsel to provide value added services to clients wishing to apply under this category.

As covered in the comparative chart in Appendix A, there are situations where immigration counsel should be recommending the CEC over the FSW Class or Provincial Nominee Class. These recommendations will be influenced by factors such as which party do you act for (i.e., the foreign national or the employer), and what are the top priorities (e.g., speed of processing or minimizing legal fees. For instance, a CEC application is much less involved than a BC PNP -

¹⁵ *supra* note 7.

¹⁶ *supra* note 7.

permanent residence application combination, so the legal fees would likely be less). And at the current time, with the new eligibility assessment procedures for the FSW Class involving CPC-Sydney acting as the Centralized Intake Office, the perceived delays caused by these new procedures suggest that applicants may be better off applying under the CEC even if they must wait a few months before qualifying. This includes considering withdrawing an FSW Class application and re-submitting under the CEC.

In closing, it is important for immigration practitioners to have a solid understanding of the CEC's criteria. This includes considerations for temporary foreign workers and students, processing issues, and how it compares to other Economic Classes. As a result of its simplicity and processing time, the class may represent a viable and attractive option. On the other hand, its selection criteria, including the number of years of Canadian experience required before applying, may influence many would-be applicants to explore other avenues.

Appendix A - Comparison of CEC, FSW Class and BC PNP-Provincial Nominee Class

	Canadian Experience Class	Federal Skilled Worker	Provincial Nominee
Work experience	<p><i>Temporary Foreign Worker Stream</i></p> <p>At least two years of full-time (or equivalent, equal to 37.5 paid hours per week) skilled work experience in Canada, with proper authorization, within three years of applying. Skill Type 0 or Skill Level A or B.</p> <p><i>Post-Graduation Stream</i></p> <p>At least one year of full-time (or equivalent) skilled work experience in Canada, with proper authorization, acquired after completed the required study and obtained a Canadian credential (work performed under the Off-Campus Work Permit Program or co-op work terms do not count).</p> <p>For both streams, work experience gained under LMO-exempt WP categories is recognized, such as under the Post-graduation Employment (C43), Working Holiday Program and Student Working Abroad Program (SWAP) (C21), and Spouses and Common-law Partners of Skilled Workers (C41) categories.</p>	<p>Must have:</p> <p>(a) at least one year of continuous full-time (or equivalent part-time) paid work experience in the ten years preceding the date of application in one or more of the occupations listed in the Ministerial Instructions;</p> <p>(b) resided legally in Canada for at least one year as a temporary foreign worker or international student;</p> <p>(c) an arranged employment offer (i.e., currently working in Canada, the employer has made an offer of indeterminate employment, and the work permit is supported by a Labour Market Opinion or is confirmation exempt (e.g., CEC C10, C12, T21/22, T23, T24)); or</p> <p>(d) an Arranged Employment Opinion (AEO).</p> <p>Full-time work is equivalent to at least 37.5 hours of work per week.</p>	<p><i>BC PNP Skilled Worker category</i></p> <p>The nominee candidate must be qualified for the job. Program staff will review the candidate's qualifications and experience to confirm that employment requirements are met.</p>

	Canadian Experience Class	Federal Skilled Worker	Provincial Nominee
Educational credentials	<p><i>Post-Graduation Stream</i></p> <p>Graduate from a Canadian post-secondary institution, with proper authorization.</p> <p>Must have completed either:</p> <ul style="list-style-type: none"> • a full-time Canadian post-secondary educational program of at least two years. Diploma, degree, or trade or apprenticeship credential. “Full-time” according to the institution. “Two years” - at least 16 months, or four semesters, within the 24 months. Studies can include any period of training in the workplace that forms part of the course of study; or • a one-year Master’s program and an additional year of education obtained in Canada within the two years preceding completion of the graduate program (for a total of two years). <p>Following periods of study or training are not included:</p> <ul style="list-style-type: none"> • ESL / FSL courses do not count if represent more than half of the hours of instruction/training; • studies in Canada taken under an award from the Canadian International Development Agency (CIDA); or • studies in Canada taken under an award from the Department of Foreign Affairs and International Trade (DFAIT) programs including: Canadian Commonwealth Scholarship Program; Government of Canada Awards Program; Canada-China Scholars Exchange Program; Equal Opportunities Scholarship Program, Canada-Chile; and Organization of American 	<p>R78(2):</p> <p>(a) 5 points for a secondary school educational credential;</p> <p>(b) 12 points for a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 12 years of completed full-time or full-time equivalent studies;</p> <p>(c) 15 points for</p> <p>(i) a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 13 years of completed full-time or full-time equivalent studies, or</p> <p>(ii) a one-year university educational credential at the bachelor's level and a total of at least 13 years of completed full-time or full-time equivalent studies;</p> <p>(d) 20 points for</p> <p>(i) a two-year post-secondary educational credential, other than a university educational credential, and a total of at least 14 years of completed full-time or full-time equivalent studies, or</p> <p>(ii) a two-year university educational credential at</p>	<p><i>BC PNP International Graduate category</i></p> <p>The <u>degree</u> must be awarded within the following fields:</p> <ul style="list-style-type: none"> • Natural sciences, applied sciences or engineering; • Health sciences; • Computer science, information systems or digital media; • Business or commerce; • Tourism, recreation and hospitality; or • Transportation and logistics. <p>At its discretion, the BC PNP may accept degrees in other fields of study.</p> <p>A list of degree programs that B.C. private post-secondary institutions are authorized to offer is available at the Ministry of Advanced Education and Labour Market Development website:</p> <p>http://www.aved.gov.bc.ca/degree-authorization/recommendations-decisions.htm</p> <p>A program of study, offered by a B.C. public post-secondary institution, that is normally greater than 12 months of full-time equivalent study.</p> <p>The <u>diploma</u> must be awarded within the following fields:</p> <ul style="list-style-type: none"> • Applied sciences or technologies, or engineering;

	<p align="center">Canadian Experience Class</p>	<p align="center">Federal Skilled Worker</p>	<p align="center">Provincial Nominee</p>
	<p>States Fellowship Program.</p> <p>Programs must be delivered by a private or public post-secondary educational institution such as a college or a university that is provincially recognized, or private CEGEPs:</p> <ul style="list-style-type: none"> • a diploma, degree, or trade or apprenticeship credential from a public, provincially recognized Canadian university, community college, CEGEP, or trade/technical school, or • a diploma or trade or apprenticeship credential from a private Quebec post-secondary institution that operates under the same rules and regulations as public institutions, and receives at least 50 percent of its financing for its overall operations from government grants, subsidies or other assistance - at this time only private CEGEPs qualify, or • a degree from a Canadian private provincially recognized post-secondary institution <p>Distance learning, including online programs, does not qualify</p>	<p>the bachelor's level and a total of at least 14 years of completed full-time or full-time equivalent studies;</p> <p>(e) 22 points for</p> <p style="padding-left: 20px;">(i) a three-year post-secondary educational credential, other than a university educational credential, and a total of at least 15 years of completed full-time or full-time equivalent studies, or</p> <p style="padding-left: 20px;">(ii) two or more university educational credentials at the bachelor's level and a total of at least 15 years of completed full-time or full-time equivalent studies; and</p> <p>(f) 25 points for a university educational credential at the master's or doctoral level and a total of at least 17 years of completed full-time or full-time equivalent studies.</p> <p>“Full-time” means at least 15 hours of instruction per week during the academic year, including any period of training in the workplace that forms part of the course of instruction.</p> <p>“Full-time equivalent” means, in respect of part-time or accelerated studies, the period that would have been required to complete those studies on a full-time basis.</p>	<ul style="list-style-type: none"> • Health sciences or technologies; • Computer science or technology, information systems or digital media; • Business or commerce; • Tourism, recreation and hospitality; pr • Transportation and logistics. <p>At its discretion, the BC PNP may accept credentials in other fields of study.</p> <p>Nominee candidates will be expected to have earned an overall mark of at least 70 percent (or equivalent grade-point average) in their program.</p>

	<p style="text-align: center;">Canadian Experience Class</p>	<p style="text-align: center;">Federal Skilled Worker</p>	<p style="text-align: center;">Provincial Nominee</p>
<p>Language requirements</p>	<p>If most of work experience is classified as Skill Type 0 or Skill Level A, must show meet the requirements for level 7 on the Canadian Language Benchmarks (can have 6, 7, 7, 8).</p> <p>If most of work experience is classified at Skill Level B, must show meet the requirements for level 5 (can have 4, 5, 5, 6).</p> <p>IELTS - 7.0 = 8, 6.0 = 7, 5.0 = 6, 4.5 = 5, 4.0 = 4</p> <p>TEF - see</p> <p>http://www.cic.gc.ca/english/information/applications/guides/5609E2.asp#experience</p>	<p>R79(2):</p> <p>(a) for the ability to speak, listen, read or write with high proficiency</p> <p>(i) in the first official language, 4 points for each of those abilities if the skilled worker's proficiency corresponds to a benchmark of 8 or higher, and</p> <p>(ii) in the second official language, 2 points for each of those abilities if the skilled worker's proficiency corresponds to a benchmark of 8 or higher;</p> <p>(b) for the ability to speak, listen, read or write with moderate proficiency</p> <p>(i) in the first official language, 2 points for each of those abilities if the skilled worker's proficiency corresponds to a benchmark of 6 or 7, and</p> <p>(ii) in the second official language, 2 points for each of those abilities if the skilled worker's proficiency corresponds to a benchmark of 6 or 7; and</p> <p>(c) for the ability to speak, listen, read or write</p> <p>(i) with basic proficiency in either official language, 1 point for each of those abilities, up to a maximum of 2 points, if the skilled worker's proficiency corresponds to a</p>	<p>N/A</p>

	Canadian Experience Class	Federal Skilled Worker	Provincial Nominee
		benchmark of 4 or 5, and (ii) with no proficiency in either official language, 0 points if the skilled worker's proficiency corresponds to a benchmark of 3 or lower.	
Job offer			Skill Level 0, A or B, excluding occupations designated by BC PNP at http://www.aved.gov.bc.ca/provincialnominee/strategicoccupations/skilledworkers.htm
Time restriction	Apply while working in Canada – or – within one year of leaving job in Canada.		International Graduates must apply within one year of the date shown on the final official transcript
Differences in application forms	Schedule 8: Economic Classes – Canadian Experience Class (IMM 0008 – Schedule 8). It is similar to the Schedule 3 but focused only on Canadian educational credentials and work experience in Canada during the last three years. Section 7 “Your Work Experience in Canada” is similar to Section 11 “Your Work Experience” in the Schedule 3, with the additional columns for the employer and the number of hours of work per week.	Schedule 3: Economic Classes – Federal Skilled Workers.	Schedule 4: Economic Classes – Provincial Nominees.
Differences in supporting documents	Only asks for valid immigration document, not past ones. Only proof of <u>Canadian</u> educational credentials required. Only proof of <u>Canadian</u> work experience required. Asks for most recent Notice of Assessment, T4 slips, Records of Employment.	Proof of Canadian relatives in Canada to secure points.	Proof of educational credentials not required (but relevant education certificates and apprenticeship documents are required for BC PNP application. The final official transcript is required for International Graduate applicants).

	Canadian Experience Class	Federal Skilled Worker	Provincial Nominee
	<p><u>No requirement for confirming an offer of indeterminate employment, so no adverse effect of applicant ceases employment while the application is pending.</u></p> <p>Proof of settlement funds not required.</p> <p>No place on document checklist to select location of interview, if required.</p>	<p><u>Confirmation of employment letter, confirming offer of indeterminate employment, required.</u></p>	<p>Proof of work experience not required.</p> <p><u>Recommendation Letter must confirm offer of indeterminate employment.</u></p> <p>The detailed job description and job offer are required.</p> <p>Proof of language proficiency not required.</p>
Where application is submitted	<p>If applicant is in Canada - Buffalo.</p> <p>If applicant is not in Canada - visa office responsible for country of residence, country of nationality or country where have been legally admitted for at least one year.</p>	<p>If applicant is in Canada - Buffalo.</p> <p>If applicant is not in Canada - visa office responsible for country of residence, country of nationality or country where have been legally admitted for at least one year.</p>	<p>If applicant is in Canada - Buffalo.</p>
Statistical / anticipated processing time	Buffalo (80%) - 8 months.	Buffalo (30% - 80%) - 16-25 months.	Buffalo (30% - 80%) - 5 - 8 months.
Recommendation	<p>Use over FSW and PNP categories if wish to avoid risk of applicant being laid off while application is pending.</p> <p>Use over FSW category if applicant meets CEC requirements.</p> <p>Consider using over Provincial Nominee category if the employer is not the firm's client.</p> <p>Consider using Temporary Foreign Worker Stream if the employer does not qualify under the BC PNP (e.g., in operation for at least one year with at least five full-time employees).</p>	<p>Consider using when applicant does not meet CEC requirements and the employer is not the firm's client.</p>	<p>For employees in a Management or Skill Level A occupation, consider using over CEC if the applicant is not a native English speaker or can not score at least a 6 (out of 9) on each of the four components of the IELTS test.</p> <p>For employees in a Skill Level B occupation, consider using over CEC if the applicant is not a native English speaker or can not score at least a 4.5 (out of 9) on each of the four components of the IELTS test.</p>

	Canadian Experience Class	Federal Skilled Worker	Provincial Nominee
	<p>Consider using Temporary Foreign Worker Stream if the employee does not qualify under the BC PNP (e.g., owns more than 10% of the equity of the BC business or effectively controls the business).</p> <p>Consider using Post-Graduation Stream over the BC PNP International Graduate category if the job offer does not fall into a prescribed field recognized by the BC PNP or if the applicant did not achieve at least 70% or equivalent GPA.</p>		<p>Consider using BC PNP International Graduate category over the CEC Graduate subcategory if the applicant did not acquire one year of work experience after completing the required study and obtaining the Canadian credential</p>

Appendix B - Immigration and Refugee Protection Regulations regarding the CEC

Classes

70(2) The classes are

- (a) the family class;
- (b) the economic class, consisting of the federal skilled worker class, the transitional federal skilled worker class, the Quebec skilled worker class, the provincial nominee class, the Canadian experience class, the investor class, the entrepreneur class, the self-employed persons class, the transitional federal investor class, the transitional federal entrepreneur class and the transitional federal self-employed persons class; and
- (c) the Convention refugees abroad class, the country of asylum class and the source country class.

Part 6
Economic Classes
Division 1
CANADIAN EXPERIENCE CLASS

Class

87.1(1) For the purposes of subsection 12(2) of the Act, the Canadian experience class is prescribed as a class of persons who may become permanent residents on the basis of their experience in Canada and who intend to reside in a province other than the Province of Quebec.

Member of the class

(2) A foreign national is a member of the Canadian experience class if

- (a) they
 - (i) have acquired in Canada within the 24 months before the day on which their application for permanent residence is made at least 12 months of full-time work experience, or the equivalent in part-time work experience, in one or more occupations that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix, and have acquired that work experience after having obtained
 - (A) a diploma, degree or trade or apprenticeship credential issued on the completion of a program of full-time study or training of at least two years' duration at a public, provincially recognized post-secondary educational or training institution in Canada,
 - (B) a diploma or trade or apprenticeship credential issued on the completion of a program of full-time study or training of at least two years' duration at a private, Quebec post-secondary institution that operates under the same rules and regulations as public Quebec post-secondary institutions and that receives at least 50 per cent of its financing for its overall operations from government grants, subsidies or other assistance,
 - (C) a degree from a private, provincially recognized post-secondary educational institution in Canada issued on the completion of a program of full-time study of at least two years' duration, or
 - (D) a graduate degree from a provincially recognized post-secondary educational institution in Canada issued on the completion of a program of full-time study of at least one year's duration and within two years after obtaining a degree or diploma from an institution referred to in clause (A) or (C), or
 - (ii) have acquired in Canada within the 36 months before the day on which their application for permanent residence is made at least 24 months of full-time work experience, or the equivalent in part-time work experience, in one or more occupations that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix; and
- (b) they have had their proficiency assessed in the English or French language by an organization or institution designated under subsection (4), or have provided other evidence in writing of their proficiency in either language, and have obtained proficiencies for their abilities to speak, listen, read and write that correspond to benchmarks, as referred to in Canadian Language Benchmarks 2000 for the English language and Niveaux de compétence linguistique canadiens 2006 for the French language, of

(i) in the case of a foreign national who has acquired work experience in one or more occupations that are listed in Skill Type 0 Management Occupations or Skill Level A of the *National Occupational Classification* matrix,

(A) 7 or higher for each of those abilities, or

(B) 6 for any one of those abilities, 7 or higher for any other two of those abilities and 8 or higher for the remaining ability, and

(ii) in the case of a foreign national who has acquired work experience in one or more occupations that are listed in Skill Level B of the *National Occupational Classification* matrix,

(A) 5 or higher for each of those abilities, or

(B) 4 for any one of those abilities, 5 or higher for any other two of those abilities and 6 or higher for the remaining ability.

Application

(3) For the purposes of subsection (2),

(a) full-time work is equivalent to at least 37.5 hours of work per week;

(b) any period of self-employment or unauthorized work shall not be included in calculating a period of work experience;

(c) the foreign national must have had temporary resident status during their period of work experience and any period of full-time study or training;

(d) the foreign national must have been physically present in Canada for at least two years of their full-time study or training;

(e) any period during which the foreign national was engaged in a full-time program of study or training in English or French as a second language — and any period of full-time study or training in respect of which study or training in English or French as a second language amounted to most of the full-time study or training — shall not be included in calculating the period of full-time study or training;

(f) any period of study or training during which the foreign national was a recipient of a Government of Canada scholarship or bursary, or participated in an exchange program sponsored by the Government of Canada, a purpose or condition of which was that the foreign national return to their country of origin or nationality on completion of their studies or training shall not be included in calculating the period of full-time study or training; and

(g) in the case of a foreign national whose work experience is referred to in both subparagraphs (2)(b)(i) and (ii), the foreign national must obtain a proficiency in the English or French language that corresponds to the benchmarks required for the skill type, as set out in subparagraph (2)(b)(i) or (ii), in which the foreign national has acquired most of their work experience.

Designated organization

(4) The Minister may designate organizations or institutions to assess language proficiency for the purposes of this section and shall, for the purpose of correlating the results of such an assessment by a particular designated organization or institution with the benchmarks referred to in subsection (2), establish the minimum test result required to be awarded for each ability and each level of proficiency in the course of an assessment of language proficiency by that organization or institution in order to meet those benchmarks.

Conclusive evidence

(5) The results of an assessment of the language proficiency of a foreign national by a designated organization or institution and the correlation of those results with the benchmarks in accordance with subsection (4) are conclusive evidence of the foreign national's proficiency in an official language of Canada for the purposes of this section.

SOR/2008-254, s. 3.