

**Proposal for
Canada-Based Immigration Processing**

[2000-05]

**CITIZENSHIP AND IMMIGRATION LAW SECTION
CANADIAN BAR ASSOCIATION**



May 2002

TABLE OF CONTENTS

Proposal for Canada-Based Immigration Processing

PREFACE	- i -
A. Introduction and Rationale	1
B. Proposed Model	3
C. Temporary Visas	7
D. Advantages of the Proposed Model	7
<i>i) Consistency</i>	8
<i>ii) Security</i>	8
<i>iii) Efficiency</i>	9
<i>iv) Job Creation</i>	9
<i>v) Cost</i>	9
E. Conclusion	9

PREFACE

The Canadian Bar Association is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the National Citizenship and Immigration Law Section of the Canadian Bar Association, with assistance from the Legislation and Law Reform Directorate at the National Office. The submission has been reviewed by the Legislation and Law Reform Committee and approved as a public statement of the National Citizenship and Immigration Law Section of the Canadian Bar Association.

Proposal for Canada-Based Immigration Processing

A. Introduction and Rationale

A competitive global economy has enlarged the labour supply pools beyond the borders of any one country. At the international level there is more “free trade”, greater deregulation of industries, a rapid growth in information technology, and a marked liberalization of global human mobility brought on by the end of the Cold War (reduced security concern), lower transport and communication costs, and Canada’s commitment at the international level to promote international economic prosperity by increasing trade between nations through easing restrictions on the mobility of goods, capital, and labour.

Today, the reality is that Canada needs to compete globally. Canada needs access to the very best people globally to provide the very best goods and services to the world. Thirty years ago, Canada was considered a “natural resource” export country. Canadian labour supply pools required protection by government. Today, the export of natural resources account has fallen to just 37% of our international trade. Our economy has changed. The immigration rules need to reflect the changes in technology, and the realities of global economic competition.

A cornerstone of the *Immigration Act* is the requirement to apply overseas for an immigrant visa. This cornerstone was laid when immigrant visa processing times were six months or less, and when individual visa officers met personally with individual applicants overseas to counsel them on “coming to Canada.” These conditions no longer exist. In 1998, the global average processing time for 80% of the overseas permanent resident applications was 20 months or more.

Technology and budgetary constraints have radically altered the structure of the operational delivery system for the issuance of immigrant visas. Large numbers of applicants for permanent residence never encounter a Canadian visa officer. Canadian visa officers no longer counsel individual applicants on “coming to Canada.”

The cornerstone’s very foundation is now not recognizable because the underlying conditions for rapid personalized “hands on” decision making in individual cases is no longer a reality. The outdated principle of “applying overseas” for an immigrant visa is based on an outdated concept that has no current relevance and is an expensive model to maintain in the year 2000 and beyond.

The Citizenship and Immigration Canada Performance Report for the 1998-99 fiscal year shows that, yet again, the number of immigrants is lower than projected. Total immigration for the period fell short of the low end of the target range by 13%. It is worth noting that it also fell short of the higher end of the range by almost 23% and of the Liberal Party’s policy by approximately 42%. The reasons why the stated levels have not been achieved are many.

While it is not within the mandate of the National Citizenship and Immigration Law Section of the Canadian Bar Association (the Section) to argue for specific levels of immigration, we have a history of advising the Government as to how best to achieve its objectives. In our view, implementing a form of Canada Based Processing (CBP) would assist in reaching targeted immigration levels through increased consistency, efficiency and cost effectiveness. The purpose of this submission is to propose a system of Canada Based Processing.

The CBP concept recommended by the Section is a system where front end processing of permanent resident applications will be done at a Canada based processing centre

(CBPC). Applicants would submit the necessary documentation to the CBPC for preliminary screening.

Implementation of this proposal will help CIC realize a number of goals, including:

- operational efficiency in processing applications;
- reduced cost of services by moving significant decision making powers and all administrative and financial functions to Canada;
- ability to prosecute and convict immigration personnel in cases of abuse, including theft of fees and visas;
- ability to process cases to meet levels; and
- job creation for Canadians in Canada.

B. Proposed Model

The Section recommends a model with three basic features:

1. all permanent resident applications would be submitted in Canada for processing of the application for immigration to Canada. Immigrant visas would be issued at the CBPC or CIC office abroad where an immigration selection interview was deemed necessary by a visa officer at the CBPC.
2. applications would be processed by visa officers assigned on a rotation basis from overseas offices and by Canadian administrative staff employed at the CBPC. All data would be entered in Canada in the CAIPS system. CBP would parallel the present system. The significant legal change we propose is the requirement that the application be submitted to a CBPC, not an office abroad. All selection decisions would be made by a visa officer. Also, the definition of “visa officer” in the Act would be amended to include those officers stationed at the CBPC and empowered to make selection decision. A decision made by a visa officer either in Canada or at an overseas office

- would be “a decision of a visa officer” and as such be reviewable by the Federal Court of Canada pursuant to the Federal Court Immigration Rules, 1993. Leave of the Federal Court would not be required for decisions of visa officers rendering decisions in Canada. No distinction would be made between an overseas decision and a Canada based decision. Visa officers at the CBPC and at overseas offices would have the same discretionary powers. The manager of the CBPC would have the same delegated authority as a Program Manager at a overseas CIC. A full complement of formally trained visa officers (foreign service stream) would be located at the CBPC to ensure high quality decision making and to limit, as much as possible, the need for referral to the post abroad.
3. Where required, interviews would be conducted by a visa officer at a CIC office abroad. The position of Designated Immigration Officers would be eliminated. Only Canadians formally trained as visa officers (currently referred to as Canada based officers) would approve the issuance of immigrant visas for Canada in an overseas office.

The Section recommends commencing with a pilot project of short duration by processing “easier” applications such as computer or software specialists, or engineers with approval of the Canadian Council of Professional Engineers. These applications would be forwarded to a designated CBPC from the overseas offices, where they would be reviewed by fully trained and experienced visa officers. Given the success of the Buffalo RPC, which we look to as a model for this proposal, we propose that the duration of the pilot should be a maximum of one year.

Document verification is a key component of a successful system. For the preliminary document review at the CBPC, staff would be trained and supervised by visa officers in document verification. CIC offices abroad could provide CBPC staff with additional local information required for document verification.

The overseas visa officer could do further document verification of original documents at or prior to the interview.

In the system currently in place for the USA, the Buffalo RPC operates as a hub and entry point for immigration applications to Canada. If an interview is required, the Buffalo file is sent to an interviewing office in the continental USA. The CBPC would follow this model. If an interview were required, either to ensure system integrity by implementing periodic checks or to verify documentation, all or a portion of the file and documents would be sent from the CBPC to the overseas office prior to the interview. The visa officer at the office abroad could review original documents not in the file at the CBPC when the applicant attends for the interview. It would be incumbent on the applicant to bring any requested original documents to the interview.

Consider the following examples of how cases would be processed:

Case #1: computer specialist with a Ph.D. from Harvard

- documents reviewed in CBPC
- decision in CBPC to waive interview
- document verification of certain original documents only
- file and documents remain in CBPC
- request applicant send certain original documents to CBPC for review
- medical examination conducted, result acceptable and submitted
- CBPC reviews original documents
 - if examination of documents is acceptable
 - no interview required
 - visa issued from CBPC
 - visa sent to applicant's representative

Case #2: travel agent, university education, three years' experience, fluent English

- documents reviewed in CBPC
- decision in CBPC that interview required
- file and documents sent from CBPC to overseas office
- request applicant take original documents to interview
- if medical examination is acceptable, interview conducted by visa officer in overseas office
- if interview acceptable
 - visa issued from overseas office
 - visa sent to applicant's representative

Case #3: random quality control — documents checked to ensure originals exist

- documents reviewed in CBPC
- decision in CBPC to waive interview
- file sent from CBPC to overseas office
- medical examination done and results are acceptable
- applicant take original documents to overseas office
- visa officer reviews the documents
- if documents acceptable
 - no interview required
 - visa approved
 - visa issued from overseas office
- if original documents not acceptable, interview is immediately conducted
- if interview acceptable
 - visa approved
 - visa issued from overseas office
 - sent to applicant

Case #4: applicant not qualified

- applicant does not attain 60 points (minimum required to obtain an interview) in preliminary screening of documents
- officer considers recommending exercise of positive discretion
- if no recommendation and approval, application refused and refusal letter issued from CBPC
- if officer recommends positive discretion and approval granted by Senior Immigration Officer, officer considers waiver of interview
- if interview waived, and medical and security completed then visa issued from CBPC
- visa sent to applicant's representative
- if interview not waived, then file and documents sent from CBPC to Overseas Office
- processing continued as per example #2

C. Temporary Visas

We recommend consideration of processing temporary visa applications, such as student or employment authorization, at a CBPC at a later date, once the permanent visa CBP model and structure is implemented and perfected.

D. Advantages of the Proposed Model

With front end processing and visa issuance at a CBPC, offshore visa offices would be reduced in size, but not eliminated. We recommend that offshore visa offices have personnel from Canada and a reduced number of locally engaged staff.

i) Consistency

The main advantage of CBP is consistency. All applications would be reviewed in Canada by Canadian staff. Staff could be trained to uniform standards. The result would be reasonable consistency of approval and of processing times.

Initial processing at the CBPC would level the playing field and remove any favouritism or special access to particular lawyers or consultants.

Video conferencing would allow offshore officers to confer with the CBPC and with each other. Canadian staff in overseas offices would provide special advice on local knowledge and customs as required.

ii) Security

Under the present system, if visas or money go missing, the RCMP goes to the offshore office, investigates, and makes recommendations to the local police. If the person alleged of the theft is locally engaged staff, the RCMP is powerless to prosecute, as locally engaged staff fall under the jurisdiction of local police. Canadian staff offshore and Canadian staff working and living in Canada, can be prosecuted in Canada.

Under CBP, all visas can be issued from the CBPC, with less risk of theft. When the visa is issued it can be sent directly from the CBPC to the applicant's lawyer.

If all visas were processed in Canada, it would be easier to implement a requirement that only lawyers or consultants who are members of a regulated group, who are Canadian citizens or landed immigrants, be allowed to provide legal or consulting services for preparation of immigration applications.

The proposal would lead to greater security for applicants, as well. Applicants would be less likely to engage in forum-shopping, for fear of disclosing personal information to locally-engaged employees believed to be passing that information to local government authorities.

iii) Efficiency

With CBP accompanied by interviews and selected document verification in overseas offices, CIC could build teams of experts for the different geographic regions. Greater equality of processing times could be achieved, as Canada based officers could more easily be sent to conduct interviews in overseas offices where volume dictated. Systems in Canada could be computerized.

iv) Job Creation

We estimate that establishing a CBPC would create approximately 2,000 jobs for Canadians in Canada.

v) Cost

If CBP is phased in, reductions in overseas staffing can be made when leases on overseas offices come up for renewal. By reducing the number of locally engaged staff in overseas offices, CIC could reduce the cost of expensive foreign real estate now devoted to immigration processing.

E. Conclusion

Initially the Section was sceptical about the prospects for success of the large scale processing centres set up in Vegreville and Mississauga. However, these large scale processing centres have proved to be effective and the immigration bar has become

generally supportive of this mode of processing. The Section would welcome the opportunity to assist in developing the model.

In our respectful submission, implementing these suggestions would go a long way toward helping Canada reach its targeted immigration levels and increase the consistency, efficiency and cost saving of the delivery system.

We would propose the creation of a working group to consider the viability of centralizing the processing of immigration application within Canada.