



THE CANADIAN
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Via email: Michele.Kingsley@cic.gc.ca

Michèle Kingsley
Assistant Deputy Minister, Operations
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Michèle Kingsley:

Re: Improvements to the new H-1B visa holder work permit program

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to thank you for meeting with us on July 21, 2023 and for the constructive dialogue I've enjoyed during my term as Chair. As discussed, the CBA Section recommends processing improvements to the new H-1B visa holder work permit program (program).

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.

In our view, the July 2023 program intake raised issues of access because of technological glitches and the tardy release of program eligibility criteria. The application intake began on July 16, 2023 and closed after reaching its cap of 10,000 applications the next day. We expect that this will aggravate the backlog, due to the many unviable applications submitted.

The CBA Section makes 10 recommendations to help structure future program intake cycles:

Recommendation 1: Release program eligibility criteria and filing instructions before opening program

Applicants require program literature ahead of time to gauge their eligibility and prepare their application. The program eligibility criteria and filing instructions were only available on the program launch date, which impeded access and likely deterred excellent candidates from applying.

It is also likely that among the 10,000 applications received by IRCC, many applicants will be found ineligible. We recommend releasing the instructions at least a day before the program intake begins and offering a technical briefing for counsel.

Recommendation 2: Communicate in advance on the applicable filing portal and time intake will begin

Some applicants woke up at 12:01 AM on Sunday, July 16 to check whether the program was live. Our members report considerable confusion over which portal to use. Going live on a Sunday limited access to counsel for applicants. We recommend sharing clear and early instructions on the applicable filing portal and the time. We also recommend launching on a weekday.

Recommendation 3: Enable a representative version of the temporary e-filing portal

Counsel could not adequately represent applicants for the application intake because there was no dedicated representative portal. Screenshare programs to view clients' individual e-filing portals are difficult to use, and technical glitches with the educational history and personal activity sections of the application worsened the problem. We recommend that IRCC finalize the development of the representative version of the portal before the next program intake cycle to ensure authorized representatives can file on behalf of applicants.

Recommendation 4: Ensure that applicants have adequate information on documentary requirements in advance of program intake

The website indicates that proof of residence in the United States is a mandatory requirement, but no part of the document checklist mentions the need to upload proof of residence. Applicants had to submit their applications before adequate information was released by IRCC. It likely led to countless IRCC webform updates sent post-intake by applicants attempting to submit proof of their U.S. residence.

Recommendation 5: Undertake proper user acceptance testing of the portal before release

It appears that the portal was not properly tested before the program went live. A major coding glitch on the Personal Activities section would not allow a candidate to advance to the next screen if they answered the questions properly for education and work history. This was not an isolated event and affected all applicants. Only those committed enough to enter incomplete information in order to advance to the next screen and then include a letter of explanation to disclose the complete education or history could file their application. Many potential applicants gave up at this stage and unfortunately abandoned their applications. Others spent countless hours trying to figure out what prompted the error message after following the instructions.

The CBA Section reiterates its offer to beta test IRCC portals on a volunteer basis.

Recommendation 6: Consider additional eligibility criteria to avoid meeting the cap too quickly

The cap would have been reached within a few hours if applicants knew in advance where to apply and there was no technical glitch at the Activity section.

Given the number of interested applicants for this program – and the number of H-1B visa holders in the U.S. – it may be worth considering additional eligibility criteria for further applications.

Recommendation 7: Give clear instructions on how to include dependents

There were no clear instructions on how to include dependents in the application. Unless someone had prior experience submitting applications through the Canada-Ukraine Authorization for Emergency Travel (CUAET) program, they could not know how to include their dependents in the portal submission.

Unlike filing a work permit for an accompanying spouse, which was discernable because of how the portal was set up, it was impossible to include study permit applications for dependent children unless the principal applicant had applied to IRCC in the past and had been issued a Unique Client Identifier (UCI). The only way for a family to include an open study permit for minor children was to enter a "made-up placeholder" UCI number to allow the screen to advance to the next section and subsequently submit a letter explaining that the UCI was false and only used to allow the application to be processed.

Also, there was no mechanism to include children as a "family member of an H-1B Visa holder", as was the case for the spousal open work permit option. Candidates had to select the existing Study Permit option and ensure it was included in the family group.

We recommend sharing clear instructions on how to include each type of dependent and releasing the information ahead of the intake date.

Recommendation 8: Share instructions on how to add family members after filing an application

Many applicants filed individually instead of including their spouse and children out of fear that the 10,000 cap would be reached before they had time to fill in the information for their family members. Adding family members through the portal took up to three times longer than individual applications. This prejudiced families over individual applicants, which raises further fairness concerns and could result in a systemic barrier for women trying to access the program. Understanding that the best H-1B candidates are those with years of work experience, many are likely to be of an age where they have dependents. This issue may have alienated many of these best candidates.

With the portal access now closed, applicants can no longer add family members. As hinted at on the program landing page, applicants also lose the faculty to add family members once their work permits are approved.

We recommend that IRCC release program delivery instructions to assist H-1B visa work permit applicants to apply for open spousal work permits for their spouse or common-law partner and dependent children.

Recommendation 9: Implement an application submission tracker

With no application submission tracker, many people started an application and spent hours completing it, only to find they were unable to submit their application. If every application initiated could be submitted, IRCC likely would have received 15,000 to 20,000 applications. We recommend including an application submission tracker on the website landing page before the next intake cycle.

Recommendation 10: Analyze program data including how many applicants effectively came to Canada

It has become apparent to immigration lawyers and employers across Canada that many H-1B visa holder applicants relied on this Canadian work permit program as an "insurance policy", with many never effectively relocating to Canada. In the context of widespread layoffs in the tech sector in the U.S., some applicants applied as a "plan B", should their employment in the U.S. be terminated.

We recommend that IRCC, in partnership with the Canada Border Services Agency, track the number of H-1B visa holder work permit applicants who arrive in Canada. IRCC did a similar data analysis to evaluate the number of CUAET applicants who arrived in Canada. This will help gather reliable information on whether the goal of attracting high tech talent to Canada is being achieved. IRCC can then make data-based decisions on whether further application intake cycles are desirable and whether program eligibility criteria need to be reviewed.

The CBA Section appreciates the opportunity to help improve the program. We would be pleased to discuss our recommendations with you further.

Yours truly,

(original letter signed by Véronique Morissette for Lisa Middlemiss)

Lisa Middlemiss
Chair, CBA Immigration Law Section