



February 16, 2022

Via email: sean.fraser@parl.gc.ca

The Honourable Sean Fraser, P.C. M.P.
Minister of Immigration, Refugees and Citizenship
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Minister Fraser:

Re: Facilitating transition of international students to Permanent Residence status

I am writing on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to recommend:

- an extension, with certain modifications, of the [Temporary Public Policy](#); and
- a path to permanent residence (PR) status for foreign nationals who recently graduated from a postsecondary academic program in Canada.

The goal of the recommendations is to ensure international students continue to fulfill Canadian labour needs on a long-term basis and in particular during the COVID-19 pandemic.

The CBA is a national association of 36,000 lawyers, law students, notaries and academics, from across Canada, with a mandate to seek improvements in the law and administration of justice, and access to justice. The CBA Section is comprised of over 1,200 lawyers, practising in all aspects of immigration law and rendering professional advice and representation in the Canadian immigration system to clients in Canada and abroad.

The Government of Canada has consistently recognised that international students bring strong employment and language skills, bolstered by their Canadian education and work experience, so they are ideal candidates for re-settlement as permanent residents.¹ The Minister's mandate letter references expanding pathways to permanent residence for international students.² This cohort of international students has contributed to our economy during the COVID-19 pandemic and has faced a number of challenges doing that. The skills gained by these international students are essential to the Canadian economy. If they cannot extend their status now, Canada will lose significant essential and talented workers.

¹ Government of Canada [announces further measures to support international students](#).

² Minister of Immigration, Refugees and Citizenship Mandate [Letter](#)

Extending temporary policy changes to Post-Graduation Work Permit Program

The CBA Section makes these recommendations in response to IRCC's internal memo of November 24, 2021, on "Managing Federal High Skilled Inventory" and our meeting with you on January 20, 2022, both of which confirm that no Express Entry Draws are scheduled for the Canadian Experience Class, for the foreseeable future. These recommendations also respond to the Minister's mandate to expand PR pathways for international students, while responding to community needs.

The CBA Section recommends that this Policy be implemented as soon as possible. Canadian employers and international students continue to be affected by the COVID-19 pandemic. Similar concerns led to the original Temporary Public Policy, allowing current and former Post-Graduation Work Permit Program (PGWP) Holders to extend their status and a special Pathway to Permanent Residence.

The majority of the international students currently waiting for an Invitation to Apply (ITA) in the Express Entry pool provide key services in National Occupational Classification (NOC) 0, A or B occupations. Historically, they could continue working and supporting the economy, by applying for a Bridging Open Work Permit after receiving an ITA and applying for permanent residence via Express Entry. However, no ITAs have been issued in the Canadian Experience Class since September 2021. Essential and skilled international students therefore risk their work permits expiring, without recourse for renewal. If the current situation continues, they will have to stop working and leave Canada.

The Temporary Public Policy facilitated issuance of an Open Work Permit (OWP) to former or current PGWP holders affected by the pandemic, but it was a one-time policy that included only PGWP holders whose OWP had expired or were to expire on or before November 27, 2021. Not all PGWP holders affected by the pandemic had access to the Temporary Public Policy, due to its limited intake period and strict PGWP expiry requirements.

During this time, IRCC also gave these international students access to the Temporary Residence to Permanent Resident Pathway (TR to PR Pathway), which closed on November 5, 2021. In addition to not having the same opportunity to extend their status, the current cohort of international students have fewer opportunities to transition to permanent residency than previous cohorts. Additionally, several internal limitations in the TR to PR Pathway made it challenging for the current cohort of international students to take advantage: delayed publishing of application guidelines, no availability for language testing, technical issue with the payment portal, and caps on Student Streams reached within 24 to 48 hours.

The current cohort includes highly qualified workers who came to Canada after completing foreign bachelor's or master's degrees. Most post-graduation programs offered by Canadian educational institutions are less than 16 months, so this group is unable to take advantage of the TR to PR Pathway, International Students Stream. Canada risks losing this large pool of qualified international students who completed post-graduation programs in Canada.

The lack of options means these international students work under the stress of expiring work permits, which impacts their mental health and well-being. A temporary policy allowing them to apply for OWP will relieve a lot of this pressure.

The current situation cannot be remedied by Provincial Nomination Programs, as most of these programs are subject to processing delays and annual quotas. International students need a solution now if they are to continue to assist the Canadian economy to grow during the pandemic. They are ideal candidates to remedy the current shortage of workers in a broad range of occupations across Canada. Our economy is not in a position to lose them.

Recommendations

Our recommendations are based on the assumption that a new PR Pathway or Stream for international students will take time to implement. Time many of these students no longer have.

We recommend that:

1. there be an extension of the Temporary Public Policy with key changes, with current and former PGWP holders eligible for an 18-month long OWP.
2. the extension be based on the original Temporary Public Policy, of January 27, 2021, with two amendments:
 - a. Longer Intake Period: active from enforcement until December 31, 2022.
 - b. Eligibility Criteria: available to current PGWP holders, whose work permits will be valid for up to eight months from the date they submit an extension application.
3. the extension continue to include former PGWP holders who have lost temporary resident status, but have applied to restore their status or are eligible to have their status restored.
4. the extension include an option for former PGWP holders to update their pending work permit extension applications, by informing the processing officer that they are eligible for the extension. IRCC processing officers should have guidelines to review these requests if no decision has been made on the pending work permit extension application.
5. the extension not be limited to a one-time opportunity. PGWP holders who used the Temporary Public Policy in 2021 should be granted the extension if they meet the eligibility requirements.
6. the extension include a waiver of the regulatory prohibition on Work Permit issuance (under R200(3)(e)), where applicants are not prohibited from applying if they engaged in unauthorized work or study in the last six months.
7. the extension be limited to PGWP holders who held a valid PGWP on or after March 17, 2020.

CBA Section members have seen many clients affected by the current lack of options for resettlement as Permanent Residents. The CBA Section believes that a more inclusive Policy, as outlined above, is needed quickly to avoid the loss of critical workers. Otherwise, international students will likely be deterred from considering Canada for their education.

Temporary Graduate Canadian Experience Class to facilitate transition of certain international students to Canadian Permanent Residence status

IRCC's website states that there are opportunities to "stay and work in Canada after graduation," including paths to PR status.³ This statement sets a reasonable expectation that there are opportunities for students to remain in Canada following graduation from their Designated Learning Institution (DLI).

³ IRCC, *Study in Canada as an International Student*, online: <www.canada.ca/en/immigration-refugees-citizenship/services/study-canada.html>; IRCC, *Work or live in Canada after you graduate*, online: <www.canada.ca/en/immigration-refugees-citizenship/services/study-canada/work/after-graduation.html>

In practice, the PR paths marketed to international students by Canada are not equally accessible across Canada. For example:

1) Atlantic Immigration Pilot (AIP)

This category is available exclusively to graduates from a postsecondary institution in Atlantic Canada with eligible job offers. Graduates from DLIs who live in other provinces or territories are not eligible for this stream.

2) Federal Skilled Worker (FSW), Canadian Experience Class (CEC), Federal Skilled Trades (FST) programs

These categories rely on a points system. Although the Comprehensive Ranking System (CRS) awards bonus points for Canadian degrees, Express Entry draws have occurred on a sporadic basis during the pandemic. The most recent CEC draw was on September 14, 2021.

3) Specific streams of the Provincial Nominee Program (PNP), with requirements that differ by province

Some PNP student-focused streams have yet to adapt to the realities of the pandemic's impact on businesses. Consider the Ontario Immigrant Nominee Program (OINP) as an example, with Ontario being the most popular destination for international students in Canada.⁴ Employers in Ontario are either considering or have already announced permanent "work-from-home" plans. The OINP's *International Student with a Job Offer* stream still requires that an applicant planning to settle in the Greater Toronto Area have the support of an Ontario employer. To be eligible, the employer must demonstrate that they employ a minimum of five other employees in the same physical location as the international student being supported for a provincial nomination. With many Ontario businesses considering pandemic recovery plans that do not include a full-time return to the office, employer criteria at the provincial level can be major obstacles for international graduates.

Some PNP streams require a "permanent" job offer of indeterminate duration (e.g., Ontario). This is not a typical commitment that employers offer to new graduates. Further, if the employee were to separate from their employer during the 25-month federal processing time,⁵ they would become ineligible. This requirement puts students in a precarious situation, especially because of long processing times.

Other PNP streams such as the Manitoba PNP will deduct points for an international student who graduated from a program outside of Manitoba. Further points are deducted if that same graduate works in a province outside of Manitoba for any length of time.

4) Rural and Northern Immigration Pilot (RNIP)

The RNIP excludes international students based on their institution's location in Canada. The location of study was a decision the students made years prior to the pandemic when they were starting to dream about building lives and careers in Canada. The RNIP also depends on securing a "permanent" job offer, which may be difficult for a recent graduate given economic uncertainties caused by the pandemic.

⁴ Supra note 1.

⁵ IRCC, *Check Processing Times*, [online](#).

Recommendation

The CBA Section recommends introducing a Pilot Program for Recent Graduates with Canadian Experience (the Pilot) that targets international students who remained in Canada to start their careers and wish to permanently settle in Canada, outside of Quebec.

The CBA Section recommends that this Pilot be delivered through the new online PR application portal⁶ to allow clearing of the Express Entry backlog to continue in parallel without changing the chances for international students to remain in Canada.

Possible criteria for this Pilot would be:

- **Presence in Canada:** Applicants must be physically inside Canada when they apply. They must be on valid temporary resident status or eligible for restoration of their temporary resident status.
- **18 Months of Post-Graduate Work Experience:** The work experience must have occurred after graduation from a DLI, within three years of the date of their PR application. The experience need not be continuous or with the same employer but must be paid, 30 hours per week or equivalent in part-time work and not self-employed, unless the applicant was working as a medical doctor in a fee-for-service arrangement with a health authority. As we suggest a higher threshold than CEC, the Pilot can be positioned as a “CEC +” or “International Graduate CEC” stream. The work experience must have been authorized work experience on any work permit, or on maintained status per section 186(u) or 186(w) of the *Immigration Refugee and Protection Regulations*.
- **Language test:** A minimum language proficiency requirement should be set for this Pilot, similar to the CEC class with Canadian Language Benchmark (CLB) 7 for NOC O and A, CLB 5 for NOC B, and the addition of CLB 4 for NOC C and D. The test results must have been received within two years of the date of application.
- **No academic programs should be excluded:** Any PGWP holder who graduated from a DLI and is eligible to work in Canada should have access to the Pilot. Students often choose one-year academic programs because they already have a bachelor’s degree in their home country. Often, these students also opt for a second one-year program. Students with one-year programs are often left in precarious situations with shorter work permits, and are unable to apply for the TR to PR Pathway and PNPs. These students often fill important labour shortages in Canada and should not be left behind.
- **No cap:** We recommend not limiting the intake of applications for this Pilot. As we have seen with previous programs such as the TR to PR Pathway, programs with caps lead to frenzied application submission and will result in many applications from those who do not qualify or have the documentation to submit a proper application. This leads to waste of resources and a negative public perception of the immigration system.
- **Targeted:** to ensure that the most vulnerable PGWP holders have access to the Pilot, it should restrict applicants to those who graduated from any DLI before August 31, 2022.

⁶ [Online](#) PR application portal.

- **Duration of the Pilot:** the pilot should be launched as soon as possible and be open at least for 18 months after August 31, 2022. This will capture the students who graduated during the pandemic. Keeping the Pilot open for 18 months (or longer) will allow IRCC to responsibly start regular CEC, FSW and FST draws under Express Entry with smaller invitation volumes while current backlogs are still being addressed. A separate path for this potentially vulnerable cohort will ensure that the integrity of Express Entry is maintained while attracting overseas workers in a way that does not impact students.
- **Work Experience to be High Skilled or under an In-Demand Occupation:** We recommend that the work experience be high-skilled, as per the current CEC rules, but also to allow those who work in In-Demand Occupations to qualify to meet the labour needs in Canada.

The suggested application criteria are specific enough to target only the students most affected by the Express Entry backlogs caused by the pandemic. These students stayed in Canada after graduation, indicating that they genuinely intend to permanently settle in Canada if given a chance. They should get a fair opportunity and time to properly prepare a complete PR application (i.e., take a language test, get a medical exam, police checks, etc.) and submit a full application package.

We recommend offering two sub-streams with slightly different criteria (see Annex A).

Recommendation

The CBA Section recommends that IRCC undertake completeness checks and issue formal Acknowledgement of Receipt letters in a consistent and timely manner.

We understand that IRCC processing times are slowed by the pandemic. Guarantees on processing benchmarks would not be realistic at this time. To mitigate the uncertainties around the total timeline to PR status, the CBA Section urges IRCC to launch this Pilot with a minimum service level for issuance of Acknowledgement of Receipt (AOR) letters or emails. Implementing this Pilot rapidly can facilitate OWP applications. Having an AOR in hand will give eligible graduates some peace of mind and a path forward to maintaining their temporary residence status through a Bridging Open Work Permit application, if needed.

Conclusion

The CBA Section appreciates the opportunity to recommend these solutions for international graduates with Canadian work experience. We would be pleased to discuss our recommendations, offer additional insights, and assist with the development and implementation of relevant policies and regulatory amendments.

Yours truly,

(Original letter signed by Véronique Morissette for Kyle Hyndman)

Kyle Hyndman
Chair, Immigration Law Section

ANNEX A – Proposed Sub-Streams for Temporary Graduate Canadian Experience Class

	Skilled Experience Stream	Essential or In-Demand Occupations
Work experience	18 months in the 36 months preceding application in one or more NOC level O, A or B occupations.	18 months in the 36 months preceding application in one or more occupations identified by IRCC as in-demand or essential of levels C and D occupation.
Language requirements	CLB 7 for NOC O and A, CLB 5 for NOC B. Language test results must be no later than two years preceding date of application.	Minimum CLB 4, language test results must be from no later than 2 years preceding date of application.
Current Employment	Similar to current CEC requirements, no requirement to be currently employed at time of application.	Applicant actively working in the in-demand/ targeted essential occupation at time of application.