



April 28, 2022

Via email: sean.fraser@parl.gc.ca ; Minister@cic.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: Recommendations to Improve the Post-Graduation Work Permit Program

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to suggest improvements to the Post-Graduation Work Permit Program (PGWPP).

The CBA is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,200 members across Canada practising in all areas of immigration and refugee law.

The CBA Section commends Immigration, Refugees and Citizenship Canada (IRCC) for the PGWPP¹ improvements implemented on February 14, 2019. As stated in our [February 16th, 2022 letter](#)² recommending an expansion of pathways to permanent residence for international students, the CBA Section believes international students are an important part of the long-term solution to fill Canadian labour-market needs. This letter offers recommendations on current pathway issues, such as inconsistencies and unclear directives, that affect often vulnerable international students, and create challenges for employers that seek to employ students after graduation.

Confusion with the phrase 'completion of studies'

The PGWPP instruction guidelines state:

Applicants must apply for a post-graduation work permit (PGWP) within 180 days of obtaining written confirmation, such as an official letter or transcript, from the designated learning institution (DLI) indicating that they have met the requirements for completing their program of study.³

¹ Post-Graduation Work Permit Program, [online](#)

² CBA, Facilitating transition of international students to Permanent Residence status, [online](#).

³ Post-graduation work permit program: Making an application, [online](#).

The 180-day period is enough time for international students to arrange their affairs and submit a PGWP application. However, the phrase ‘completion of studies’ causes wide confusion as to when this period begins to run.⁴ Many international students understand this phrase as the date they receive their certificate/diploma/degree.

DLIs are not required to provide a standardized ‘official letter’ on the student’s completion of studies. One CBA member reports assisting an international student whose DLI provided the letter by way of download from the student’s online university account. The date on the letter changed each time the letter was downloaded, and the student had no way of knowing when the letter was initially posted to their account. The instructions in IRCC’s “How to apply for a post-graduation work permit”⁵ page differ from the instruction guide (Guide 5580 - Applying for a Work Permit - Student Guide - online application).⁶ The IRCC webpage states that PGWP applicants need *one of* the following:

- A degree or diploma
- An official letter from your school
- An official transcript, or a copy of your transcript from your school’s website.

However, the Document Checklist provided in Guide 5580 states that applicants require:

- A final transcript; *AND*
- A letter from the institution and/or the formal notice of graduation.

Students relying on instructions on the IRCC webpage risk submitting an incomplete application, and the language should be revised to reflect the guidelines in Guide 5580 - Applying for a Work Permit.

RECOMMENDATION

- 1. Remove the requirement that a ‘completion of studies’ letter be included with a PGWP application and rely solely on the date of the student’s final official transcript for commencement of the 180-day application deadline.**

Confusion when referencing the legislation

Many international students remain unclear as to when exactly they stop being a student despite the wording of the legislation, as noted below, and the references to the validity period tucked away in the IRCC website.⁷

PGWP eligibility criteria require that students hold or have held student status in the 180-day period before making their PGWP application. The interplay between the 180-day timeframe and other study permit-related requirements is ambiguous. Such requirements include the validity of study permit status under IRPR 222(1)(a)⁸ and authorization to work as a student under IRPR 186(v) and (w).⁹

The eligibility criteria fail to clearly identify that students who don’t submit a PGWP application within the 90 days following the end of their studies will be in Canada without status and, in some instances,

⁴ Post-graduation work permit eligibility requirements, [online](#).

⁵ Work in Canada after you graduate: How to apply: [online](#).

⁶ Guide 5580 - Applying for a Work Permit - Student Guide: [online](#).

⁷ Extend your study permit or restore your status: When to apply, [online](#).

⁸ Immigration and Refugee Protection Regulations (SOR/2002-227), [online](#).

⁹ *Ibid.*

may also be working without authorization under the belief that they have satisfied the necessary criteria allowing them to do so.

RECOMMENDATIONS

- 2. Include a standard note on study permits stating when the student status ends rather than noting the legislative references.**
- 3. Provide DLIs with a standard template for a letter to be issued along with the student's final official transcript stating that they have:**
 - i. 90 days from the date of the letter to remain in Canada under their student status despite the expiry date listed on their study permit, unless the expiry date listed on their study permit is less than 90 days away, and that they must leave Canada or apply to change their status within those 90 days or the expiry date listed on their study permit, whichever is earlier; and**
 - ii. 180 days from the date of the letter to submit a PGWP; and**
 - iii. That they may no longer work in Canada under the terms of their study permit and may only work once they have submitted a PGWP application (if eligible to do so).**

Increasing guidance on the requirement and timeline to restore status as a student

International students must be incentivized to submit PGWP applications sooner rather than later due to the risks of a rejected application. Students whose PGWP application are deficient and returned as incomplete or denied after the 90-day period must apply to restore their status as a student. They are then required to restore their status in Canada before resubmitting a PGWP application. Existing policy¹⁰ notes that they must restore as a student,¹¹ and pay the student processing fee and the restoration fee, along with the application forms and processing fee for the PGWP application.

This process could be simplified.

RECOMMENDATIONS

- 4. As an interim measure, give clear guidance to international students about the need to restore their status as a student, and the application process.**
- 5. Create a policy for a PGWP restoration-type process specifically for international students who meet all PGWP criteria within the 180-day period.**

Restoration period for PGWP applicants

Students whose PGWP application is rejected as incomplete or denied after the 180-day period lose the ability to restore their status in Canada. Their only recourse is to apply for a Temporary Resident Permit or to leave Canada.

¹⁰ How do I apply for a post graduation work permit?, [online](#).

¹¹ Under normal circumstances, restoring status as a student requires that the applicant show proof of their intention to study. In this odd scenario the process is a work around by IRCC to allow out of status students to still apply for a PGWP. The application to restore status as a student is never actually considered.

Currently, the express trigger to apply for restoration within the 90-day timeline is the loss of the Temporary Residence status. The proposed change would require amending IRPR 182¹² or issuing an IRPA 25.1¹³ exemptive policy on the grounds of the pandemic.

RECOMMENDATIONS

6. **Extend the restoration period for PGWP applicants to 90 days after the date they receive notification from IRCC that their PGWP application was unsuccessful.**
7. **Reduce rejection rates by giving PGWP applicants an opportunity to correct minor deficiencies in their applications.**

Applicants who can show they submitted their PGWP restoration application should be allowed to continue working. Not being able to work can put students in an unnecessarily precarious financial situation, as they have paid significant money for their education and may have accumulated student debt. The consequences of not being able to work are felt at all levels, with lost income and opportunities for students, lost taxes for the government, and lost productivity for the employer.

RECOMMENDATION

8. **Allow international students who have filed a restoration application to continue to work while they wait for IRCC's decision.**

Expanding the April 22nd, 2022, temporary policy to recent graduates outside of Canada

On April 22, 2022, IRCC announced a new temporary policy¹⁴ granting recent international graduates with expiring temporary status an **opportunity** to stay in Canada longer, so they can continue to gain work experience and have a better chance at qualifying for permanent residence. Starting in summer 2022, former international students who are *in Canada* and have a post-graduation work permit expiring between January and December 2022 will qualify for an additional open work permit of up to 18 months.

The CBA Section recommends that international graduates who have left the country since January because of their expired PGWPs be authorized to apply for an additional open work permit.

RECOMMENDATION

9. **Allow international graduates whose PWGP expired since January and who are currently outside of Canada to apply for Temporary Status.**

Full-time studies requirement

Foreign national students come to Canada and expect to be able to work following their studies. Canada financially benefits from the tuition fees these students pay, and from their presence when they remain as permanent residents and young workers. To fully benefit from foreign national students' presence, the CBA Section believes current policy could be more accommodating and account for circumstances outside the control of students.

¹² Immigration and Refugee Protection Regulations (SOR/2002-227), [online](#).

¹³ Immigration and Refugee Protection Act (S.C. 2001, c. 27), [online](#).

¹⁴ New measures to address Canada's labour shortage, [online](#).

Students currently can take an authorized leave from studies but cannot study part-time and still be eligible for a PGWP. However, in many instances, carrying a part-time course load is preferable to requesting a leave from studies:

- i. Illness or other contributing factors: if a student needs to reduce studies but can manage a part-time load, this is preferable to taking leave to mitigate the impact on their graduation date.
- ii. Lack of prerequisite or availability in courses: foreign students are forced to take extra courses that do not contribute to their degree to maintain a full-time course load. This can occur, for example, when no professors are available, registration numbers are insufficient, or prerequisite courses are unavailable until a later semester upon switching programs.
- iii. Failed prerequisite course: students may be unable to re-take the course until it is offered again.

RECOMMENDATION

10. Abolish the requirement that studies be full-time in every semester.

Leaves from studies

PGWPs may be issued where students have taken no longer than 150 days of leave from studies, provided they can produce the DLI's approval.¹⁵

The requirement to provide authorized leave documentation offends the Federal Court decision of *Munyanyi v. Canada (Citizenship and Immigration)*.¹⁶ In this decision, refusal of a PGWP was found unreasonable. The applicant was a student at a university that did not require its undergraduate students to request an authorized leave to take a semester off. The Federal Court chided the immigration officer for not considering this when refusing the PGWP application for lack of documentation that the leave was authorized.

RECOMMENDATION

11. Clarify in the PGWP eligibility requirements that where a DLI does not require a leave be authorized to maintain full-time student status, that the DLI's policy in this regard may be submitted in lieu of authorized leave documentation.

Leave from study is not available in all circumstances. For example, where students failing a course want to drop the course rather than have a failing grade on their transcript, leave cannot be requested retroactively. Yet, Canadian students can do so with no negative consequences other than having paid non-refundable tuition.

Without legal advice, many students do not know that they are permitted to take a leave of absence from their studies, even if they are eligible. Many international students believe they must stay active in their studies despite challenging circumstances in their lives. For example, a student was denied a PGWP because they returned to their home country due to a death in the family, and therefore missed a semester of school. Despite producing a death certificate, IRCC rejected the demand because the student did not produce a physician's letter with medical reasons for missing a semester.

¹⁵ Program delivery update: Post-graduation work permit eligibility requirements - Authorized leave documentation, [online](#).

¹⁶ *Munyanyi v. Canada (Citizenship and Immigration)*, 2021 FC 802, [online](#).

Further consideration and flexibility must be given to the mental health impact of having to take a full-time course load, particularly in light of other stressful factors that impact an international student's mental health, including settling into life in a new country, new school, often foreign language and in the middle of a global pandemic. These factors are stressful for any student, but when combined with the unexpected challenge of a failed course or death in the family, the stress of a requirement to maintain full-time studies to remain eligible for the PGWP can have serious mental health implications. These considerations, flexibility and accommodations are granted to Canadian students.

There is no justifiable policy reason why a student cannot take a part-time load in a semester and then take additional courses in the summer. There is no justifiable policy reason to have such a strict timeline and schedule for students. This is not how college or university is structured for Canadian students, and we should offer the same flexibility and accommodation to international students. Further, there is an inconsistency between the requirements for maintaining student status (where the student need only show they are progressing toward graduation) and the requirement to study full-time in every semester to be eligible for a PGWP. There is no rationale for why these policies must be different, and it adds confusion to the process for international students.

RECOMMENDATION

12. Align the PGWPP eligibility requirements with the requirements to be actively pursuing studies.

Eligibility for PGWPs for Destitute Students

The destitute student category appears as an afterthought in IRCC policy, with little or no guidance on how or where this student fits in the wider immigration scheme.¹⁷

Destitute students are offered a temporary opportunity to work to alleviate their financial difficulties. The assumption is that studying full-time is unlikely during this period. However, they are not exempted from the requirement to study full time to make a successful PGWP application. They may fall under the 'authorized leave from studies' exception, but not always.

These students are likely to miss a semester, which will necessitate study permit extensions before they become eligible to complete courses or apply for a PGWP. There is no guidance for situations where a destitute student needs two semesters instead of one to regularise their financial situation.

The regulations refer to the financial situation as being temporary, but there are insufficient instructions to applicants on what that means. International students and the DLIs that educate them need further indications on how to properly use this tool.

RECOMMENDATIONS

13. Develop guidance for destitute students.

14. Create an exemption to the requirement to have studied full-time for the duration of the work permit issued to a destitute student.

Permission to work after receiving the final transcript

In an economy grappling with labour shortages, it is a priority that employers maintain their ability to employ foreign students in whom they have expended time, finances and training resources. However, the current PGWP application process creates insecurities for both students and employers who

¹⁷ Humanitarian reasons [R208 – H81 and H82] – International Mobility Program, [online](#).

depend on the DLI's processes for transmitting proof of completion of studies. Currently, students cannot work until they have both their final transcript and a letter from their DLI, at which time they can submit their PGWP application.

RECOMMENDATION

- 15. Allow students to continue working in accordance with their study permit conditions for 90-days after receiving their final transcript. Permit full-time work during this period, similar to what is allowed during academic breaks.**

Officer's Discretion

The CBA Section applauds IRCC officers' efforts to apply a common-sense, compassionate response to students' unique circumstances. However, officer discretion is not currently codified. International students are unaware that officers may exercise discretion, or what documentation may be requested in the exercise of their discretion. Unless legal counsel or a Member of Parliament is assisting, students are often unaware that they can request discretion. Further, officers are not equally informed of when they should apply discretion and what factors to consider.

In *Munyani*, the Court noted that the PGWP-PDI states that "Officers should exercise their best judgment and take into account all relevant factors when assessing a student's compliance with their study permit conditions."¹⁸

RECOMMENDATION

- 16. Develop guidance for officers with transparent criteria on when and how to exercise discretion to approve a PGWP application where eligibility requirements have not been met.**

Conclusion and Summary of Recommendations

The CBA Section appreciates the opportunity to suggest improvements to the PGWPP.

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, CBA Immigration Law Section

cc. Savannah DeWolfe, Director of Operations and Legal Affairs (email: Savannah.DeWolfe@cic.gc.ca)

¹⁸ Supra, note 16, at para 25.