

# Getting Service Technicians into Canada

Meeting with MP Rick Norlock

Monday, January 19, 2015

Quinte West City Hall

# AGENDA

- Introduction
- Update since original meeting with Department officials (Scott)
- Review of Process to bring Skilled Trades across Border
- Suggested changes
- Next Steps
- Additional Questions

# Current Situation

- Foreign Service Techs are being treated as Temporary Foreign Workers, and an LMIA (Labour Market Impact Assessment) is required, unless:
  - They qualify as a Business Visitor (Work Permit is not required):
    - The equipment is still under warranty
    - The equipment is under a service contract established at time of purchase
  - They qualify for an LMIA exemption (Work Permit is still required):
    - T23 Exemption: Professional/Technician
      - Requires a B.S. Degree for Engineer
      - Requires a 2 year diploma for Technician
        - » Specifically EXCLUDES persons intending to do work normally done by trades, even where these trades are specialized to a particular industry
    - C13 Exemption: Emergency Repair
      - Must be in possession of a letter, telex or fax indicating the nature of their work IS AN EMERGENCY (...required in Canada ...necessary to prevent disruption of employment)
- Responsible Conservative Government Ministers have stated that this is **NOT** the intent of the TFWP:
  - MP Jason Kenney; Minister of Employment and Social Development (ESDC)
    - “Not intended...needs to fix it”
  - MP Kellie Leitch; Minister of Labour
    - “Inappropriate application of the change to the TFWP in June – should not be applied to skilled workers”
  - What is the position of the other responsible Ministers?
    - **Chris Alexander**, Minister of Citizenship and Immigration
    - **Steven Blaney**, Minister of Public Safety – responsible for CBSA
- **HOWEVER**
  - A significant volume of on-line Government of Canada references support the current situation, also supported by CME’s own guide for Business Travel
  - The legal connection of the TFWP and LMIA process to this issue is not quite clear

# Excerpts from the IRPR (Immigration and Refugee Protection Regulations)

## DIVISION 3 - WORK WITHOUT A PERMIT

### *No permit required*

**186.** A foreign national may work in Canada without a work permit

(a) as a business visitor to Canada within the meaning of section 187;

(I have not listed Items (b) through (w)– they do not apply)

### *Business visitors*

**187.** (1) For the purposes of paragraph 186(a), a business visitor to Canada is a foreign national who is described in subsection (2) or who seeks to engage in international business activities in Canada without directly entering the Canadian labour market.

### Specific cases

(2) The following foreign nationals are business visitors:

(a) foreign nationals purchasing Canadian goods or services for a foreign business or government, or receiving training or familiarization in respect of such goods or services;

(b) foreign nationals receiving or giving training within a Canadian parent or subsidiary of the corporation that employs them outside Canada, if any production of goods or services that results from the training is incidental; and

(c) foreign nationals representing a foreign business or government for the purpose of selling goods for that business or government, if the foreign national is not engaged in making sales to the general public in Canada.

### Factors

(3) For the purpose of subsection (1), a foreign national seeks to engage in international business activities in Canada without directly entering the Canadian labour market only if

(a) the primary source of remuneration for the business activities is outside Canada; and

(b) the principal place of business and actual place of accrual of profits remain predominately outside Canada.

### *Canadian interests*

**205.** A work permit may be issued under section 200 to a foreign national who intends to perform work that

(a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents; *(rest is omitted – does not apply)*

# **International Mobility Program: Canadian interests – Significant benefit – Emergency repair personnel [R205(a)] (exemption code C13)**

- Emergency repair personnel are persons whose admission is required in Canada to carry out emergency repairs to industrial or commercial equipment in order to prevent disruption of employment. They require work permits, and are exempt from a Labour Market Impact Assessment. They should be in possession of a letter, telex or fax indicating that the nature of their work is an emergency.

Date Modified: 2014-10-30

# From CIC Website: International Mobility Program: Authorization to work without a work permit – Business visitor

## General Criteria (from R187 of the IRPR - Immigration and Refugee Protection Regulations)

- There must be no intent to enter the Canadian labour market, that is, no gainful employment in Canada.
- The activity of the foreign worker must be international in scope, that is, there is the presumption of an underlying cross-border business activity, e.g., after sales service;
- There is the presumption of a foreign employer:
  - The primary source of the worker's remuneration remains outside Canada
  - The principal place of the worker's employer is located outside Canada
  - The accrual of profits of the worker's employer is located outside Canada.

## After-sales/lease service

- After-sales/lease services include those provided by persons repairing and servicing, supervising installers, and setting up and testing commercial or industrial equipment (including computer software). "Setting up" does not include hands-on installation generally performed by construction or building trades (electricians, pipe fitters, etc.).
- R187 also applies to persons seeking entry to repair or service specialized equipment, purchased or leased outside Canada, provided the service is being performed as part of the original or extended sales agreement, lease/rental agreement, warranty, or service contract.
- After-sales/lease service also includes situations where the sales/lease agreement or purchase order is for a software upgrade to operate previously sold or leased equipment, a service person coming to Canada to install, configure, or give training on the upgraded software should receive consideration as a business visitor, as long as the after-sales/lease service activity is clearly articulated in the new sales/lease agreement or purchase order. A sales/lease agreement or purchase order for upgraded software is a new contract for a new product. The fact that the upgraded software will be used to operate older equipment that may no longer be under warranty or under a service agreement is irrelevant.
- **Service personnel coming to perform service work on equipment or machinery that is either out of warranty, or where no service contract exists, continue to require an LMIA and a work permit.**
- As with NAFTA, hands-on building and construction work is not covered by this provision.

## Warranty or service agreement

- Service contracts must have been negotiated as part of the original sales or lease/rental agreements or be an extension of the original agreement. Service contracts negotiated with third parties after the signing of the sales or lease/rental agreement are not covered by this exemption. If, however, the original sales agreement indicates that a third company has been or will be contracted to service the equipment, R187 applies. **Where the work is not covered under a warranty, a work permit and an LMIA is required.**

# NAFTA

## Cross Border Movement of Business Persons

### Temporary Entry into the United States and Mexico under the North American Free Trade Agreement

#### A Guide for Canadian Businesspersons

Published by International Trade Canada

#### 2. Business Visitors

Business Visitors can enter the United States or Mexico on a temporary basis to perform work as follows:  
(previous items omitted – not applicable)

##### After-Sales Service

This activity consists of installers, repair and maintenance personnel, and supervisors that:

- have specialized knowledge essential to the seller's contractual obligations.
- perform services or train workers to perform services (pursuant to a warranty or other service contract related to the sale of commercial or industrial equipment or machinery, including software, manufactured in Canada). This provision, however, does not apply to residential sales or items.
- If entering the U.S. or Mexico to provide after-sales service, you must present a copy of the original sales contract clearly stating the reason for which you are entering the country.
- Specialized knowledge, in relation to after-sales service, is defined as a high degree of knowledge that can only be passed on to an already skilled person through extensive training. Hands-on building and construction work, either on-site or in-plant does not fall under the after-sales service category. This applies regardless of the wording in the sales, warranty or service agreements, as it is not considered to require specialized knowledge. A Canadian businessperson, however, may supervise or train workers that carry out installation, repair or maintenance work involving building or construction activities.
- Third-Party Service takes place when a seller located in Canada contracts the after-sales service to a third party and is allowable under the NAFTA. The original contract or bill of sale must clearly specify that a third party will perform the installation, warranty or service work.

The initial warranty or service agreement may be extended if the sales agreement, or the initial warranty or service agreement, provides for such an extension. In this case, the aftersales service continues to be part of the sale of equipment, machinery or computer software.

# What needs to happen

- Best Case – Recognize Service Techs as “Business Visitors”
  - No work permit required, no LMIA required
  - Would require a change to CIC and LMIA website info
  - Does it contradict NAFTA?
    - This would probably kill it
- Second Best – Make an LMIA Exemption
  - Would still require a work permit, but would be issued at the Border
  - Expand C13 exemption, or create a new exemption
- Also possible – Change execution without changing laws or regulations
  - Convince the Government that they have misinterpreted laws and regulation
  - What about all of the references that currently state and LMIA is required?



# Proposed Language

- Must be clear that we are not attempting to replace Canadian labour with foreign labour for standard day-to-day maintenance work
- “Business Visitors” to include:
  - Service technicians doing specialized work on equipment where they are the OEM, a service provider authorized by the OEM, or other entity with special expertise or proprietary knowledge
  - The nature of the work requires this expertise as determined by the Canadian company requesting the service.