

THE IMMGRATION ADVANTAGE

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Too often, “immigration” is synonymous with frustration. It does not have to be. The frustration arises when a business owner wishes to hire a foreign national to work, but soon finds out that results cannot be as immediate as the owner wishes. The bureaucracy has to be dealt with, forms have to be filed, and then Immigration Canada has to issue a permit.

It is true that a certain degree of patience and time is required - sometimes both in short supply with a thriving business - but with pre-planning and adequate footwork, the small business owner can utilize a tremendous wealth of talent, which comes to Canada on a regular basis. Such talent is not only apparent as foreign nationals come to visit the region, but is also seen with the university students who are being accepted in greater and greater numbers from abroad.

Above all, preparation is paramount when either considering the hiring of a foreign worker or in selling your own business to a foreign national. These are the two main areas where foreign nationals can be of tremendous benefit to the small business owner.

The time period for hiring a foreign national can take up to 3 or 4 months, whereas the selling of your business to a potential buyer can take up to 2 years or more. But if the business owner is prudent in forecasting needs, then such pre-planning can work effectively to assist in both hiring of a foreign worker or in selling of the business to a foreign national.

Every foreign worker must obtain a work permit under the Immigration regulations, in order to legally work in Canada. Canada needs foreign workers possessing skills in demand, while simultaneously protecting the Canadian workforce. The reconciliation of these two competing interests has led to the development of a complex employment confirmation scheme involving Service Canada (SC) and Citizenship and Immigration Canada (CIC).

As a general rule, a visa and immigration officer is not authorized to issue a work permit to a foreign worker unless, in the opinion of the officer, there are insufficient Canadians or permanent residents who can fill the potential position.

Involvement of Service Canada is a convenient way for immigration and visa officers to determine whether the employment of the foreign worker is justified, given current labour market conditions.

With a favourable opinion known as the “labour market confirmation” from SC, the immigration officer will then issue a work permit to the foreign worker, once security and medical qualifications have been met. The confirmation process generally requires consultation with the employer and Service Canada, national advertising and/or recruitment efforts, substantial documentary support and possible involvement of other

government agencies. As indicated, the processing time for work permits involving confirmation can be up to 3 or 4 months.

However, there are various exemptions to the confirmation process that can expedite and facilitate entry, of which the best known is NAFTA. NAFTA's immigration sections were designed to provide a straightforward procedure for qualified individuals in Canada, the United States and Mexico to have access to each other's labour markets. The four categories under which individuals can come to Canada, without Service Canada confirmation, but under NAFTA are as follows:

- Business visitors
- Professionals
- Intra-corporate transferees
- Investors

NAFTA streamlines the application for processing by eliminating the requirement for confirmation from Service Canada and enables applicants to obtain a job offer with a Canadian employer and then apply directly to CIC for a work permit. No advertising is required and most applicants can apply directly for work permits at a Canadian port of entry as opposed to a Canadian visa office. This means that prospective employees can simply fly to Vancouver or Victoria International Airport or drive to the Peach Arch border crossing and obtain work permits directly.

When one is seeking a foreign worker, much of the energy must first be directed to determine whether that particular foreign worker can fall into one of the categories which exempt Service Canada confirmation. If successful, the exemption itself will expedite the entry of the foreign worker into Canada, without the necessary bureaucratic red tape. The exemption must be carefully applied to the individual who is being sought to be qualified for entry, but given the number of exemptions which exist under NAFTA and the Immigration regulations, it should not be difficult to do so.

The second major area in which foreign nationals can be a benefit to the small business owner is in structuring an exit strategy for the business owner. No doubt, there are many individuals who are now considering selling their business, as the demographics show we are all approaching retirement. One excellent source of potential business purchasers is foreign nationals. Selling to a foreign national can be beneficial for the business owner, as well as the foreign national, and it can create a win-win situation.

In certain circumstances, foreign nationals require a job offer to qualify for immigration to Canada. If the business owner offers a guaranteed job offer to the foreign national to work for a period of time, the foreign national will be granted permanent residency. In addition, an option to purchase the business can be arranged with the foreign national to allow the owner to plan his or her exit strategy. Thus, the foreign national can enter into Canada based on the fact that there is a job already in existence and, ultimately, can purchase the owner's business. Not only does this provide a natural transition for the foreign national to understand the complexities of the business, but gives the assurance

to the business owner that the business can be sold for a profit without having to close the doors permanently.

Such strategy for selling a business takes pre-planning, preparation and qualifying the foreign national. But, if the business owner is aware that in 3 to 5 years time the business is to be sold, then it is not too early to plan and include foreign nationals as a potential source of buyers for the said business.

We are fortunate to be living in a part of the world that naturally attracts international interest as a desirable place to live and work. Foreign nationals bring tremendous resources to the area in both talent and financial wealth. As long as we anticipate and pre-plan for our own business needs, be it on the short-term or the long-term, we can take advantage of the natural flow of immigrants coming to our area.

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