

# Canada: The Global Race For Talent and Canada's New Tech Talent Strategy

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The Government of Canada remains steadfastly committed to immigration, embracing the role immigration plays as part of Canada's economic recovery strategy. Thus, in June 2023, Canada launched its new Tech Talent Strategy, a multi-pronged strategy.

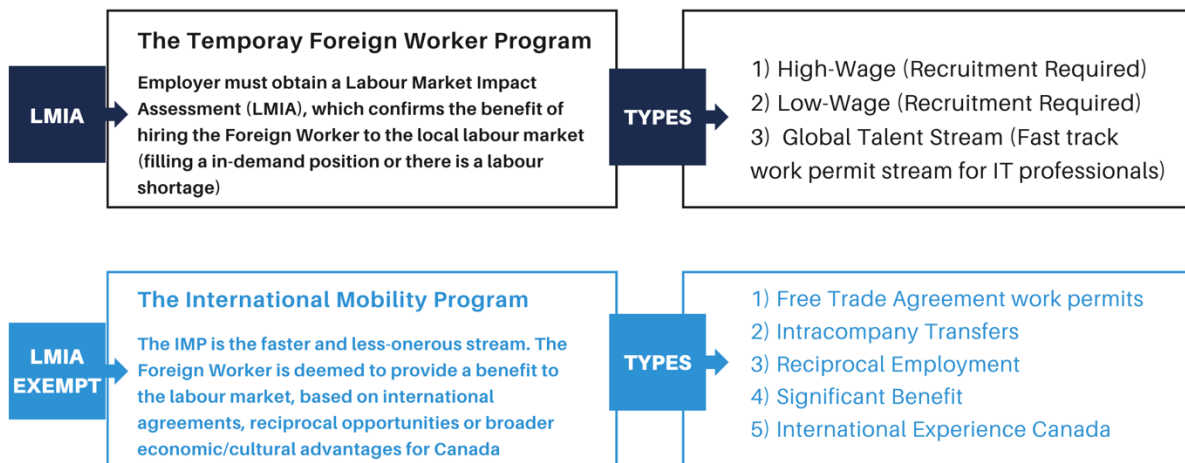
Throughout the pandemic, Canada remained committed to processing a variety of short-term temporary resident options, including work permits, as well as study, permits. Vying for top talent, Canada continued to provide immigration incentives to international students and companies seeking to expand into Canada, with impressive results. It is unsurprising that US companies (impacted by Trump-era policies and the aftermath) shifted their strategy to become "North American" by launching offices in both the US and Canada to retain and attract key talent.

## Short-Term Entry: Canadian Immigration Options

In addition to business visitors, Canada also offers a short-term work permit exemption which allows highly skilled professionals or managers to enter Canada without a work permit to perform productive work activities for 15 consecutive days in a 6-month period or 30 consecutive days in a 12-month period.

Broadly speaking, for those relocating or travelling extensively to work in Canada, there are two different work permit categories: The temporary Foreign Worker Program (TFW) and the International Mobility Program (IMP) and this article provides a brief overview of the most popular categories high-skilled talent has relied upon during the pandemic.

## *Two Major Canadian Work Permit Programs*



The eligibility criteria vary based on the subcategories outlined above, but the process depends on the two major categories as well as the applicant's citizenship. Unlike in the US, Canada allows all

visa-exempt nationals to apply at the port of entry. Visa-requiring nationals must apply online and obtain a visa stamp by submitting their application to a Canadian consulate.

### **The Temporary Foreign Worker Program**

This work permit category requires a positive Labour Market Impact Assessment (LMIA) application to be submitted by a Canadian employer, prior to the applicant's work permit application.

A positive opinion confirms that hiring foreign workers will benefit the Canadian labour market. The two streams we rely on most often are:

- **The Global Talent Stream:**
  - It is designed for high-growth and innovative companies who are willing to provide a “Labour Market Benefits Plan” (LMBP) that outlines the mandatory or complimentary benefits that it can provide to the local economy (job creation, hiring interns, hosting hackathons, or investing in diversity and inclusive workforce).
  - Eligibility – Occupation Specific:
    - Category A: there is an option in limited cases to use this category to support highly-specialized, unique talent, or managers with at least 5 years of industry experience or an advanced degree
    - Category B: Professionals or managers on the Global Talent List, which includes various In-Demand IT and STEM occupations
- **For High Wage positions:** Canada requires a test of the labour market to ensure that there are no Canadian permanent residents or citizens available to do the proposed job. It requires extensive advertising (3 sources and over 4 weeks, before the application is submitted and ongoing until the process is completed).

The process is a two-stage approach:

a) An LMIA (focused on the company, its operations and the position). There is a prevailing wage that must be met. The Canadian company needs to prove that it is actively engaged in business and able to meet the commitments of the job offer to the foreign national.

b) The foreign worker's work permit. The foreign worker needs to provide evidence that he or she is admissible to Canada and will be able to perform the job duties, based on education and experience.

### **The International Mobility Program**

This work permit category does not require a test of the labour market. Rather, the hiring of a foreign national in Canada is deemed to benefit the labour market when certain eligibility requirements are met. The eligibility for the most common work permit categories is provided below.

#### **1. Free Trade Agreement Professionals (similar to the US TN Visa)**

The Foreign Worker must:

- Be a citizen of a country that has entered into a Free Trade Agreement (FTA) with Canada. Examples include USMCA (US/Mexico), CETA (EU), CPTPP, Chile, Peru, Colombia, Korea etc.
- Work in a designated profession where the job and academic credentials are aligned
- Enter an employer-employee relationship or contract of services with a Canadian employer

## **2. Intra-Company Transfers – (Substantively similar to the L-1 category in the US)**

The Foreign Worker:

- Must be currently employed outside of Canada and transferring to a similar role in Canada.
- Will occupy a position with the Canadian entity
- Provides evidence that he or she has worked with the related transferring company for at least 1 out of the past 3 years in either:
  - Specialized Knowledge role: knowledge of internal and proprietary or highly customized tools, procedures, and/or methodologies; renewable up to 5 years. A prevailing wage is be required
  - Senior Manager/Executive role: People manager or Functional manager (manages essential business function) that manages activities and/or budget for a team, department or organization; renewable up to 7 years.

## **3. Significant Benefit – Exemption C-10 (similar to the O-1 category in the US)**

The Foreign Worker must:

- Positively Impact the Labor Market Through Knowledge Transfer, Significant Investments and/or Job Creation
- Have a Unique or Extraordinary Talent/Skillset (Compelling evidence is required in light of the immigration officer's significant discretion)

The process is a two-stage approach:

a) A compliance filing (focused on the company and the job offer). At this stage, the company confirms the terms of the job offer. There is no adjudication, but Immigration, Refugees and Citizenship Canada (IRCC) will rely on the information provided for future audit reviews.

b) The foreign worker's work permit. The foreign worker needs to provide evidence that he or she is admissible to Canada and will be able to perform the job duties, based on education and experience. The Canadian company needs to prove at this stage that it is actively engaged in business and able to meet the commitments of the job offer to the foreign national.

## **Permanent Residence**

Canada incentivizes longer-term permanent resident options for those who study or work in Canada. Immigration is critical to sustaining Canada's labour market (with almost 100% of Canada's labour force growth linked to immigration, and, by 2032, immigration is projected to account for 100% of Canada's population growth).

Canada is planning to allow 1.5 million new Canadian permanent residents by 2023. For a country with a population of only 40 million, this is almost 4 times as many immigrants per capita than the United States (Source: NFAP).

Pre-pandemic, over 80% of permanent residence cases under Express Entry, the popular merit-based immigration process, were finalized in less than 6 months, regardless of the country of birth or citizenship. Express Entry allocates points for various factors (age, education, language, work experience and other factors), and provides greater points under the comprehensive ranking system for those who have studied or worked in Canada. Notably, a job offer from a Canadian employer is not mandatory but will provide additional points. In recent months, Canada has focused its immigration efforts on temporary resident cases or those who are currently inside Canada, effectively pausing the Express Entry application process for those outside Canada since December 2020.

## **Canada's New Tech Talent Strategy (June 2023)**

Canada's Minister of Immigration, Sean Fraser, recently made several important announcements at the Collision Conference in Toronto. Most notably, he announced a new immigration program that will allow eligible H-1B visa holders to apply for an Open Work Permit in Canada.

### **Key Points: New Open Work Permit Stream for H-1B Visa Holders**

- ⇒ On June 28, 2023, Immigration, Refugees, and Citizenship Canada (IRCC) announced a new visa stream for U.S. H-1B visa holders. The new visa category is for a **three-year Open Work Permit**.
- ⇒ Only applicants with a valid H-1B visa are eligible to apply.
- ⇒ The application period opens on **July 16, 2023**.
- ⇒ The application period will be open for one (1) year, **or until 10,000 applications are received**. We expect that 10,000 applications will be received on the opening day due to overwhelming interest.

### **An Innovation Work Permit (Launching by December 2023!)**

Additionally, Sean Fraser announced the following programs that will be implemented soon:

- ⇒ **New Innovation Stream (No LMIA Required)**

- Option 1: Employer-specific work permits for up to five (5) years for workers destined to work for a company identified by the Government of Canada as contributing to our industrial innovation goals
- Option 2: Open work permits for up to five (5) years for highly skilled workers in select in-demand occupations
- Launch Date: End of 2023

### Improvements to Existing Programs

- New dedicated pathway for Permanent Residence for skilled talent in the STEM sector. 24 STEM occupations will be targeted for preferential Express Entry Draws.
- Promise to return to the Global Skills Strategy (GSS) 2-week service standard for applications submitted online

#### ⇒ **Start Up Visa Program**

- An increased target from 1000 to 3500 in 2023 permanent residents, with more expansion planned for 2024 and 2025.
- Priority processing for applications, including for companies supported by VCs, Angel investors, or business incubators and have committed capital OR applications supported by business incubators who are members of Canada's tech network.
- While applications are pending, Canada will expand work permit options by granting open work permits of up to 3 years for each member of the entrepreneurial team (not just those who are essential)

#### ⇒ **Creating a Digital Nomad Strategy**

- Currently, a worker working for a non-Canadian employer with significant ties outside Canada can enter Canada as a visitor for up to 6 months if they have sufficient means to do so.
- Canada is developing a digital nomad strategy that will allow these individuals to transition to work for a Canadian company
- Launch Date: No date confirmed – pending consultation with stakeholders