

## Monthly Newsletter (Volume 3)

### ...On the U.S. Front



#### 1. U.S. Citizenship and Immigration Services Reports Fee Changes:

In a move that will hurt Canadian businesses with branch offices in the U.S., the U.S. CIS has announced significant filing fee increases in two popular non-immigrant visa categories. Effective March 8, 2005, the filing fee for L-1 Intra-company Transfer Work Permits will increase from \$185 US per petition, to \$685 U.S. per petition. The new \$500 fee was introduced as an "anti-fraud" measure to prevent perceived abuses of this visa category by small to medium size companies.

Effective December, 2004, the filing fee for H-1B visa petitions for Specialty Occupations was increased. Employers with more than 25 employees in the U.S. will now have to pay \$1,685 US per H-1B petition. Employers with fewer than 25 employees will have to pay \$935 per petition. Additionally, these fee increases are accompanied by subtle changes in H-1B regulations which affect prevailing wage requirements and the overall H-1B visa cap.

#### 2. U.S. Department of Labor Finalizes New Labor Certification Program:

U.S. companies seeking to sponsor employees for permanent residence (Green Card) status will be affected by a completely new *Labor Certification* process which will be implemented by the Department of Labor on March 28, 2005. Labor Certification is the traditional means by which U.S. employers sponsor foreign workers for Green Cards. The process is intended to ensure that no qualified U.S. citizens are available to accept the position offered, and that the wages and working conditions offered to the foreign worker comport with prevailing standards in the city/state of intended employment. Historically, applications for Labor Certification were filed directly State Employment Security offices. The States implemented their own distinct procedures and eligibility requirements and processing times differed dramatically across the nation.

The new system known as PERM, requires employers to file their applications for Labor Certification directly with the Department of Labor thereby eliminating the State agencies from the process almost entirely. PERM requires employers to conduct standardized recruitment in advance of filing applications. Cases can be filed electronically or by hard copy. Processing times are expected to fall from current averages of over two (2) years, to close to ninety (90) days. We are hopeful that PERM will enable U.S. employers to expedite the acquisition of permanent residence status on behalf of their key employees and bring certainty to Human Resource Departments in immigration planning.





**1. Technical Amendments to the *Immigration and Refugee Protection Act* Affect Foreign Worker Processing.**

Citizenship and Immigration Canada recently implemented technical amendments to the *Immigration and Refugee Protection Act Regulations* which improve the Work Permit application process for foreign workers. Traditionally, Canadian companies seeking to hire a foreign worker would have to secure a Labour Market Opinion or "Confirmation" from Human Resources Skills Development Canada (HRSDC), and then the foreign worker would have to apply for a Work Permit through the Canadian Consulate or Embassy in his or her home country. The technical amendments to the Regulations now permit foreign workers from certain "visa exempt" nations to apply for a Work Permit directly at a port of entry immigration office (airport or land border) once they have secured a favourable Labour Market Opinion from HRSDC. This new procedure dramatically reduces processing times for Work Permits as many Embassies around the world would take weeks to process these applications. To learn how this new procedure could affect your company's immigration options, please don't hesitate to contact us.

**2. Making Your Case in Intra-company Transfer Work Permit Applications:**

Many Canadian companies have branch, affiliate or parent offices abroad. Various treaties have been signed by Canada and other nations which have fostered the ability of these companies to move their corporate transfer personnel into Canada on an expedited basis. The *General Agreement on Trade in Services (GATS)* and the better known *North American Free Trade Agreement* introduced special work permit categories for intra-company transfer workers who were citizens of countries which had signed these treaties with Canada. Subsequently, the provisions of the *Immigration and Refugee Protection Act* implemented in June, 2002 significantly broadened the availability of corporate transfer work permits to citizens of virtually every country. Notwithstanding this positive development, strict eligibility requirements still exist under this work permit category.

Generally speaking, Canadian companies with established offices overseas are able to transfer **Executives, Senior Managers** and Workers with **Specialized Knowledge** into Canada from their offices abroad. These workers must have worked for the company abroad for at least one (1) year in a full-time capacity, and must meet the strict definition of the category in which they are applying under (ie. Executive, Manager or Specialized Knowledge Worker). Immigration Officers increasingly are applying these definitions strictly. It is therefore important to "make your case" at the first opportunity and support your application with extensive documentation. Additionally, workers applying under this type of Work Permit are normally interviewed and should be prepared thoroughly for the questions they are likely to face respecting both their employment experience overseas, as well as the duties they will be asked to perform for the Canadian company. Job titles alone are not controlling. A Quality Manager for example may be deemed by a sceptical Immigration Officer to be nothing more than a Quality Supervisor and therefore ineligible for a corporate transfer work permit as a Senior Manager. Similarly, the definition of "Specialized Knowledge" in the Regulations requires the employer to prove that the employee has somehow acquired knowledge of the company's products, processes or procedures which is truly unique and would not be commonly available in the Canadian labour market. Many employees who do not understand the danger of such a definition will be unable to convince an Immigration Officer at interview that they possess such knowledge.

It is advisable in these cases to err on the side of caution and file internal job descriptions, corporate organizational charts, and other "hard" evidence which clearly demonstrates the employee's specific past and proposed duties, and overall place within the organization. When prepared correctly, applications for Work Permits under the corporate transfer provision of the *IRPA* are a terrific way of moving skilled personnel into Canada to fill critical roles within your organization.

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