

## Annex A - Supporting Documents for Genuineness

**New information is highlighted**

**Effective Date: 2018-10-16**

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Employers must provide documentation to demonstrate that the job offer is genuine. This annex provides a non-exhaustive list of supporting documents that an employer could use to demonstrate that the job offer is genuine, and important information on how to assess them.

### 1. New and returning employers

Employers applying for an LMIA for the first time or employers that have not been issued a positive LMIA in any program stream in the two years prior to receipt of an LMIA application must provide at least one document that demonstrates that they:

- have a legitimate operating business providing either a good or service related to the position being requested in Canada; and,
- are able to fulfill the terms of the job offer.

Although employers that have received a positive LMIA, in any program stream, within the two years prior to receipt of an LMIA application may not be required to submit supplementary documents to support genuineness with their application, at the officer's discretion, documents may be requested if they may help with the assessment.

Officers may request additional documents to make a determination of any of the genuineness factors if they are unable to come to a decision or if they have come to a negative assessment but the possibility of a different decision emerges subsequent to a discussion with the employer.

For foreign-based employers, any document received in a language other than official languages (English and French) must be accompanied by the English or French translation and an affidavit from the person who completed the translation attesting to the accuracy of the translation and who completed the translation.

Primary supporting documents are the documents most commonly used by employers to demonstrate genuineness. These documents are listed on the external Service Canada website. TFW Program does not assign more weight or value to any of the primary supporting documents. The employer should submit the document that they feel best demonstrates the genuineness factor being assessed.

Alternate supporting documents are not listed on the website but can be used in situations where the employer is not able to demonstrate the genuineness factor using the primary documents. Although primary supporting documents are preferred for consideration, alternate supporting documents may prove more appropriate in some cases based on the unique nature of the employer or LMIA application. Officers may request additional documentation if they are unable to comprehensively assess the genuineness factor. The officer should work with the employer to identify the most suitable alternative document for the genuineness factor being assessed.

## 2. Supporting documents

Click the links below to view the assessment procedures for each of the supporting documents. For Canadian Revenue Agency (CRA) documents, employers must submit the most recently issued CRA documents.

Factor	Primary Documents	Alternate Documents
A	<ul style="list-style-type: none"> <li>• LMIA Application</li> <li>• <u>Attestation</u></li> <li>• <u>T4 Summary of Remuneration Paid</u></li> <li>• <u>PD7A Statement of Account for Current Source Deductions</u></li> <li>• <u>Provincial, territorial or municipal business license/permits</u></li> <li>• <u>Proof of Current Address (All Private Household Employer Only)</u></li> <li>• <u>Contract, letter or invoice, Foreign Employer Only</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Lease agreement</u></li> <li>• <u>Workers Compensation Clearance Certificate</u></li> <li>• <u>CBSA Coastal Trade Act Letter of Authority, Vessels Only</u></li> <li>• <u>Safe Manning Certificate, Vessels Only</u></li> <li>•</li> </ul>
B	<ul style="list-style-type: none"> <li>• LMIA Application</li> <li>• <u>Proof of Age, In-home Caregiver Only</u></li> <li>• <u>Proof of disability, chronic or terminal illness, In-home Caregiver Only</u></li> <li>• <u>Contract, letter or invoice, Foreign Employer Only</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Contract, letter or invoice, Canadian Employers</u></li> <li>• <u>CBSA Coastal Trade Act Letter of Authority, Vessels Only</u></li> <li>• <u>Safe Manning Certificate, Vessels Only</u></li> <li>• <u>Job description and Job Offer Rationale</u></li> <li>• <u>Employer Declaration: foreign national filling a position previously occupied with similar pay and benefits</u></li> <li>• <u>Other Considerations, PR Stream</u></li> </ul>

C	<ul style="list-style-type: none"> <li>• <u>LMIA Application</u></li> <li>• <u>Attestation</u></li> <li>• <u>Contract, letter or invoice, Foreign Employer Only</u></li> <li>• <u>T2 Schedule 100 Balance Sheet Information and Schedule 125 Income Statement</u></li> <li>• <u>T2042 Statement of Farming Activities</u></li> <li>• <u>T2125 Statement of Business or Professional Activities</u></li> <li>• <u>T3010 Registered Charity Information Return</u></li> <li>• <u>T4 or Pay Stub, foreign national is already working for the employer</u></li> <li>• <u>Notice of Assessment and Financial Ability Section of the Application Form (caregiver positions from all Private Household Employers); OR Notice of Assessment (non-caregiver positions from all Private Household Employers)</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Contract, letter or invoice, Canadian Employers</u></li> <li>• <u>Internal Financial statements</u></li> <li>• <u>Employer Declaration: foreign national filling a position previously occupied with similar pay and benefits</u></li> <li>• <u>Additional Previous Years CRA Documents</u></li> <li>• Other financial resources</li> </ul>
D	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Provincial/Territorial Websites</u></li> </ul>

**3. Procedures to assess the supporting documents**

This annex provides procedures to assess each of the supporting documents listed in this document. Once all supporting documents have been assessed, return to each of the Genuineness Factors and continue with the assessment.

**3.1 LMIA Application – Factor A, B, and C**

Use the LMIA application to review the elements in Factors A, B and C against their respective requirements.

**3.2 Attestation – Factors A and C**

Employers may use an attestation by a lawyer or any other member in good standing with a law society or by a Chartered Professional Accountant (CPA) to demonstrate active engagement or reasonable ability to fulfill as long as those attestations have been

prepared and signed by the appropriate authority and contain the key assessment elements.

**Note:** in Quebec, attestations from Chartered Accountants are not authorized by the Ordre des comptables professionnels agréés du Québec).

The employer has demonstrated **actively engaged** if the attestation confirms:

- the business operation is legitimate and operating and is providing a good or service in Canada where an employee could work; and
- the description of main business activities (for the officer's assessment, these activities must be consistent with the LMIA application); and
- that the business has been operating for at least one year (permanent residency stream only).

The employer has demonstrated **reasonable ability to fulfill** if the attestation confirms:

- that the business is in good financial standing; and
- that the business is able to meet the financial obligations of hiring the TFW(s) for the entirety of the period of employment (i.e. wages, benefits, transportation, if applicable);

English	French
<u>Nova Scotia Barrister's Society</u>	
<u>Law Society of Prince Edward Island</u>	
<u>Law Society of New Brunswick – Member Directory</u>	<u>Le Barreau du Nouveau-Brunswick</u>
<u>Law Society of Newfoundland and Labrador</u>	
<u>Barreau du Québec</u>	<u>Barreau du Québec</u>
<u>Law Society of Upper Canada</u>	<u>Barreau du Haut-Canada</u>
<u>Law Society of Manitoba</u>	
<u>Law Society of Saskatchewan</u>	
<u>Law Society of Alberta</u>	
<u>Law Society of British Columbia</u>	
<u>Law Society of Yukon</u>	
<u>Law Society of Northwest Territories</u>	
<u>Law Society of Nunavut</u>	

Field Code Changed

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### 3.3 T4 Summary of Remuneration Paid – Factor A

The T4 Summary of Remuneration Paid provides a summary of all remuneration (such as salaries, wages, vacation pay, bonus, commissions, taxable benefits, etc.) paid and all source deductions collected (CPP, EI, income tax, etc.) during the taxation year. The

company that is paying salaries and wages is usually engaged in the operation of the business.

The employer has demonstrated **actively engaged** if the officer is able to confirm:

- that the CRA number and legal entity match the information provided in the LMIA application; and,
- that the employer has indeed been paying salaries and wages.

### 3.4 PD7A Statement of Account for Current Source Deductions – Factor A

CRA issues the Statement of Account for Current Source Deductions to businesses with employees that submit source deductions on their behalf (CPP, EI, Income Tax). This document provides a summary of source deduction remittances.

The employer has demonstrated **actively engaged** if the officer, using judgement and the information contained in the documentation provided, is able to confirm:

- that the employer has made remittances by obtaining all PD7A issued in the last year (PD7A is a monthly statement for most employers but may be quarterly or semi-monthly).

### 3.5 Provincial, territorial or municipal business license/permits – Factor A

Business license/permits regulate business activities and are normally required by employers when starting and managing their business.

The employer has demonstrated **actively engaged** if the officer is able to confirm that:

- the license/permit has been issued to the business named on the LMIA application;
- the organization issuing the license/permit is legal and legitimate organization known to the public;
- the license/permit is for the operation of a business offering a good or service in Canada;
- licensed/permitted activities are consistent with the LMIA application;
- the license/permit must be valid (not expired) at the time of the LMIA submission and assessment; and,
- the business address on the license/permit is consistent with business address on the LMIA.

### 3.6 Proof of age (Caregiver only) – Factor B

If the care recipient does not have a disability, chronic or terminal illness then the employer must provide documentation confirming the age of the care recipient younger than 18 or 65 years or older. If younger than 18 years, the document must also demonstrate that the employer is the parent or legal guardian.

If the care recipient is	then
younger than 18 years of age	<ul style="list-style-type: none"> <li>• long form birth certificate</li> <li>• adoption certificate</li> <li>• official guardianship (permanent)</li> <li>• licensed medical practitioner's note confirming the pregnancy and due date</li> </ul>
65 years of age or older	<ul style="list-style-type: none"> <li>• birth certificate</li> <li>• passport</li> <li>• Old Age Security card</li> <li>• any other government issued ID that contains both the full legal name and date of birth</li> </ul>

The employer has demonstrated **reasonable employment need** if the officer is able to confirm that:

- the age of the care recipient is younger than 18 or older than 65 years of age;
- that the employer is the parent or legal guardian if the care recipient is younger than 18 years.

### 3.7 Proof of disability, chronic or terminal illness (Caregiver Only) – Factor B

The employer must provide Schedule H or a physician's note attesting that the patient has a disability, chronic or terminal illness and that he/she requires access to an in-home caregiver.

The employer has demonstrated **reasonable employment need** if the officer is able to confirm that the document contains:

- physicians' name;
- care recipients' name;
- physicians' signature and date;
- physicians' address;
- physicians' identification number;
- physicians' telephone number;

- attestation confirming that the care recipient has a disability, chronic or terminal illness;
- attestation confirming that the care recipient requires access to an in-home caregiver.

Do not ask for details on the care recipient's condition. This is not information that can form part of the assessment.

### 3.8 Proof of Current Address (All Private Household Employers Only) – Factor A

Regardless of their history with the Program, private household employers must demonstrate proof of address of the employment location to demonstrate active engagement. This can be demonstrated by using documents such as a driver's license, a utility bill, a provincial/territorial identification card, a bank statement, a pension statement, a CRA notice of assessment or a statement of government benefits such as CPP, OAS or GIS.

**Caregiver Positions Only:** Employers residing at the same address as the care recipient (i.e. the work location where the foreign national will perform their duties) do not have to demonstrate that they are actively engaged. Employers hiring caregivers to care for a person at a different address must provide proof of the care recipient's address, regardless of their history with the Program.

If the proof of address is consistent with the LMIA application work location information then the employer has demonstrated **active engagement**.

### 3.9 Contract for goods or services or Invoice, Foreign Employer Only – Factors A, B and C

Using the information on hand or by contacting the employer, determine if the foreign-based employer is in the process of establishing a business in Canada or may already have a CRA number. If so, the foreign-based employer should apply as a Canadian-based employer, providing their CRA business number and Canadian business information.

If foreign-based employers are not in the process and do not intend to establish a business in Canada, they are asked to submit a contract for goods or services or invoice in lieu of CRA documents.

The employer has demonstrated **actively engaged** if the officer is able to confirm that:

- the company issuing the formal contract for goods or services or invoice is itself a legal and legitimate business known to the public (e.g. internet search);
- the contract for goods or services or invoice is for a good or service;

- the employer's business address and operation is located outside of Canada;
- there is a clear indication that the employer has been engaged to undertake work in Canada for a limited, defined period of time (A letter of intent or a conditional contract is not sufficient);
- the contract for goods or services is signed and dated by all parties involved;
- the location and scope of work are consistent with the LMIA application;
- the start and end dates of the work are consistent with the LMIA application; and
- the date the agreement was signed is reasonable and consistent with the LMIA application.

The employer has demonstrated **reasonable ability to fulfill** if the officer, using judgement and the information contained within the document, is able to confirm that:

- the terms of the contract (i.e. compensation, expense account value and availability of funds, etc.) provide the employer with adequate resources to reasonably be able to fulfill the terms the job offer on the LMIA including providing:
  - wage;
  - appropriate work environment;
  - hours of work; and
  - needed resources where required.

### 3.10 T2 Schedule 125 Income Statement Information and T2 Schedule 100 Balance Sheet Information – Factor C

Incorporated employers use the T2 schedules to file their annual corporate income tax return. The schedules provide information on income and profits of a business. If satisfied that the employer is reasonably able to fulfill the terms of the job offer after assessing the schedule 125 then there is no need to assess schedule 100 or vice versa.

The employer has demonstrated **reasonable ability to fulfill** if the officer, using judgement, is able to confirm that based on the information contained in the following two schedules demonstrates that the employer's net income and/or retained earnings are great enough to support the wages of the TFW:

#### Schedule 125:

As a general rule, net income should be great enough to support the estimated wages of the TFW for the duration of the employment. Compare line 9970 with the cost of the job offer. Should that line not be listed, calculate operating income by adding lines 9369 (Net Non-farming Income) and 9899 (Net Farming Income).

Cost of job offer \$47,000:	Cost of job offer \$47,000:
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o Line 9970: \$27,400 ✗	o Line 9970: \$180,000 ✓
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If line 9970 net income exceeds the cost of the job offer then, the employer has demonstrated a reasonable ability to fulfill the terms of the job offer.

**Schedule 100:**

Retained earnings are listed on line 3849. Retained earnings is the cumulative earnings (profit/loss) maintained by the company. These funds could be reinvested in the business (i.e. pay the costs of the job offer), used to pay debt or paid as dividends to shareholders. Do not add retained earnings and net income: this error will provide a skewed impression of the company's reasonable ability to fulfill.

Cost of job offer \$47,000	Cost of job offer \$47,000
o Line 3849: \$15,400 ✗	o Line 3849: \$70,000 ✓

If line 3849 retained earnings exceed the cost of the job offer then, the employer has demonstrated a reasonable ability to fulfill the terms of the job offer.

**3.11 T2042 Statement of Farming Activities – Factor C**

This form is used by self-employed farmers or members of farming partnerships to calculate the farming income and expenses as well as the division of profit/loss among partners for income tax purposes. A separate T2042 must be filed for each farm business.

For TFW Program purposes the officer's assessment should focus on the information pertaining to the farm or business rather than the individual's share of any profits or losses.

The employer has demonstrated **reasonable ability to fulfill** if the officer, using judgement and the information contained in the documentation provided, is able to confirm that net income is greater than the cost of the job offer and is great enough to support the terms of the job offer.

Cost of job offer \$47,000:	Cost of job offer \$47,000:
o Line 9899: \$27,400 ✗	o Line 9899: \$180,000 ✓

**3.12 T2125 Statement of Business or Professional Activities – Factor C**

Sole proprietor or partnership employers use the T2125 to calculate their annual business income/loss which in turn is used on their personal tax return. A separate T2125 must be filed for each business.

For TFW Program purposes the officer's assessment should focus on Parts 1 through 5 which calculate income, expenses and profit/loss for the business. The other parts relate to the division of income between partners and other calculations.

The employer has demonstrated **reasonable ability to fulfill** if the officer, using judgement and the information contained in the documentation provided, is able to confirm that net income is greater than the cost of the job offer and is great enough to support the terms of the job offer. Therefore, if line 9369 net income exceeds the cost of the job offer then, the employer has demonstrated a reasonable ability to fulfill the terms of the job offer.

Cost of job offer \$47,000: o Line 9369: \$27,400 X	Cost of job offer \$47,000: o Line 9369: \$180,000 ✓
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### 3.13 T3010 Registered Charity Information Return – Factor C

A registered charity must file a complete T3010 return every year within six months of its fiscal period end. Failure to meet the deadline could result in revocation of charitable status. Registered charities are very different from corporations and partnerships as they do not use profits as a measure of success.

CRA Registered Charity Information Returns are available to the public, click [here](#) to search by charity name. Normally the assessment can be completed using the information found in “Quick View”. However, if required, more detailed information can be found using the “Full View” links.

The employer has demonstrated **reasonable ability to fulfill** if the officer, using judgement and the information contained in the documentation provided, is able to confirm that total revenue is greater than the cost of the “Compensation” section and the job offer, and is great enough to support the terms of the job offer.

- The “Compensation” section provides an indication of the general size of the charity/charitable organization which can indicate the employer's ability to absorb the additional cost of hiring the foreign national. Compare the cost to hire the foreign national with “total compensation for all positions”. If “total compensation for all positions” indicates that the employer is reasonably able to pay the cost of the job offer then, the employer has demonstrated a reasonable ability to fulfill the terms of the job offer.

- Total revenue can be an indicator of the employer’s financial ability to fulfill the financial terms of the job offer. Compare the cost to hire the foreign national with total revenue. An employer with a high level of revenue (millions) would normally be able to absorb the salary of an additional worker; one that collected \$100,000 in revenue is less likely to have the ability to absorb the additional cost of hiring a foreign national. Determine if the employer has demonstrated a reasonable ability to fulfill the terms of the job offer.

**3.14 T4 or Pay Stub with SIN redacted – Factor C**

This option is only available to employers who will continue to employ the foreign national named on the LMIA. Refer to the Directive on Collection, Retention and Disposition of Unsolicited Personal Information (not yet available) if the employer did not redact the social insurance number. For pay stubs, the employer must provide payroll records for a minimum of 6 weeks immediately prior to the submission of this LMIA application to demonstrate reasonable ability to fulfill.

If the foreign national will continue to be employed in a position with	then
the same or similar terms of employment (e.g. duties, wages, etc.)	the employer’s past ability to fulfill the terms of the job offer should be deemed as a reasonable indication of the employer’s continued <b>reasonable ability to fulfill</b> the terms of the job offer.
different terms of employment (e.g. duties, wages, etc.)	<p>the employer’s past ability to fulfill a portion of the terms of the job offer should be considered as a reasonable indication of the employer’s continued <b>reasonable ability to fulfill</b> that portion of the job offer.</p> <p>If the terms of employment increased significantly, then the officer must conduct a new assessment to determine the employer’s <b>reasonable ability to fulfill</b> the new terms of the job offer.</p>

**3.15 Notice of Assessment, Financial Ability Section of the Application Form & LICO, All Private Household Employer – Factor C**

CRA issues a Notice of Assessment (NOA) to all Canadian taxpayers after processing their tax returns. This tax assessment summarizes the results and states the amount of taxes to be paid or refunded.

The NOA is used to establish the employer's household income. As part of this assessment, regardless of their history with the TFW Program, employers must submit a copy of their Notice of Assessment (NOA) from the CRA with their LMIA application. The NOA submitted must be of the past year if your application is submitted after July 1st. NOA's submitted of previous years will not be accepted. If due to an extraordinary circumstance the NOA is not available, the employer must provide an acceptable rationale (i.e. ongoing random CRA audit) in order to submit an alternate document such as an employment contract, or a letter from a financial institution or Chartered Professional Accountant clearly separating savings and other income from illiquid assets such as real estate.

The following cannot be used to assess the employer's reasonable ability to fulfill the terms of the job offer:

- investment portfolios (including RRSPs, RRIFs, Mutual Funds, Cashable GICs or Term Deposits, etc.);
- stocks or bonds;
- material possessions of any value.

The low income cut-offs (LICOs) are income thresholds below which a family will likely devote a larger share of its income on the necessities of food, shelter and clothing than the average family. CRA calculates LICO using community size and family size.

The TFW Program uses the most recent CRA issued NOA submitted by the employer to determine if the employer is reasonably able to fulfill the terms of the job offer. For caregiver applications, the TFW Program also reviews the information that the employer provides on the Financial Ability section of the application form.

Step 3.15.1 Review the employer's annual income (see line 15000 [formerly 150] on NOA or the alternate documents listed below). For caregiver applications, if there are two employers, determine the combined income by adding line 15000 of each NOA.

Step 3.15.2 Review the LICO figure that applies to the employer's household. For caregiver applications, if there are two employers residing in separate households, they must each provide the LICO figure that applies to their respective household and the combined LICO figures will be used.

Step 3.15.3 Calculate the total annual wage to be paid to the foreign worker to be employed by the private household employer.

Step 3.15.4 Add LICO or combined LICO figures (3.15.2) and total annual wage of the foreign worker (3.15.3). Compare the result to the employer's annual income (3.15.1).

Step 3.15.4.1 If the annual income is greater, then the employer has demonstrated a **reasonable ability to fulfill** the terms of the job offer.

Step 3.15.4.2 If equal to or less than:

Step 3.15.4.2.1 inform the employer that they do not meet the minimum program requirements, they have not demonstrated a reasonable ability to fulfill the terms of the job offer;

Step 3.15.4.2.2 (**for caregiver positions only**) if there is only one employer, advise the employer that a second employer may be added. If the employer agrees, they must submit an attestation signed and dated by all employers. The attestation must provide all information found in Section 10 of the LMIA Application and must include financial information of all employers;

Step 3.15.4.2.3 (**for caregiver positions only**) if the employer does not wish to identify a second employer, then they have not demonstrated a reasonable **ability to fulfill** the terms of the job offer.

### Alternate Supporting Documents

#### 3.16 Contract for goods or services or invoice, Canadian Employer – Factors B and C

The employer has demonstrated **reasonable ability to fulfill and reasonable employment need** if the officer, using judgement and the information contained within the document, is able to confirm that:

- the contract for goods or services or invoice represents new, confirmed work, not anticipated work. If not, then the document should not be used to determine the employer's reasonable ability to fulfill the terms of the job offer; and,
- the terms of the contract (i.e. compensation, expense account value and availability of funds, etc.) provide the employer with adequate resources to reasonably be able to fulfill the terms the job offer on the LMIA including providing:
  - wage;
  - appropriate work environment;
  - hours of work; and,
  - needed resources where required

#### 3.17 Lease Agreement – Factor A

As a standalone document, the lease agreement may not fully satisfy Factor A, however the officer may request this document to address a specific information gap after assessing other Annex A documents.

To help support the determination of **actively engaged**, the officer should examine the lease agreement for the following:

- the lease has been signed and was issued to the business or to the primary contact named on the LMIA application;
- the organization issuing and signing the lease agreement is a legal and legitimate organization known to the public (e.g. internet search);
- the lease agreement start and end dates are consistent with the LMIA application; and,
- the lease agreement address is consistent with the LMIA work location.

### **3.18 Workers Compensation Clearance Certificate – Factor A**

A Workers Compensation Clearance Certificate, or its equivalent depending on the province/territory, is a document issued by the Workplace Safety & Insurance Board (WSIB). It declares that an employer is registered with the WSIB and has an account in good standing.

In isolation, the certificate is not seen as a good indicator of genuineness, however the officer may request this document to address specific Factor A information gaps after assessing other Annex A documents.

To help support the determination of **actively engaged** the officer should examine the Workers Compensation Clearance Certificate for the following:

- the certificate has been issued to the business named on the LMIA application;
- the organization issuing the certificate is legal and a legitimate organization known to the public who's jurisdiction includes the work location;
- the business address on the certificate is consistent with the location of work or the address of the business on the LMIA;
- the certificate issue date is consistent with the LMIA application and not expired; and
- the certificate is officially stamped and/or signed (if applicable, document may not be stamped or signed if generated using the WSIB website in some provinces and territories).

### **3.19 Canada Border Services Agency (CBSA) Letter of Authority (Vessels Only) – Factor A and B**

A letter issued by CBSA under the *Coasting Trading Act* which provides authority to temporarily import a vessel into Canada.

To help support the determination of **actively engaged and reasonable employment need**, the officer should examine the letter from CBSA for the following:

- date of letter
- start and end dates of authorization
- flag country

- name of vessel
- permission granted to enter Canadian waters
- purpose of entry to Canadian waters
- parameters of entry (e.g. perform one (1) voyage loading)

### 3.20 Safe Manning Certificate (Vessels Only) – Factor A and B

A certificate issued to a vessel, by the flag state administrators, that sets out the minimum number of crew required to operate the vessel. It should be retained on board and be available for inspection whenever required by an authorized person.

To help support the determination of **actively engaged and reasonable employment need**, the officer should examine the certificate for the following and consider whether the certificate information makes sense when considered in context with the information found in the LMIA:

- name of vessel;
- type of vessel;
- job titles and number of positions required to operate the vessel.

### 3.21 Detailed Job Description and Rationale for Job Offer – Factor B

To help support the determination of **reasonable employment need** the officer should examine the Job Description and Rationale for the following:

- Business activity description and/or business plan (i.e. statement of work)
- Rationale for number of positions requested
- Rationale for work duration
- Rationale for “no” language requirement
- Information related to the decision to hire the TFW

### 3.22 Internal Financial Statements – Factor C

Financial statements may be requested if the officer is unable to comprehensively assess **reasonable ability to fulfill** using the primary supporting documents. In most cases it is not necessary to request audited statements; however, it is required that the financial statements be signed by a CPA (internal or external).

### 3.23 Employer Declaration: Foreign national filling a position previously occupied with similar pay and benefits – Factor B and C

This option can be considered when the position is not new and the employer is filling a vacated position with a foreign national. The declaration may be requested if the officer is unable to comprehensively assess **reasonable ability to fulfill** the terms of the job offer using the primary supporting documents.

The employer has demonstrated **reasonable employment need** if the officer, using judgement and the information contained within the document, is able to confirm that the position:

- was previously filled by another individual earning the same/similar pay and benefits;
- had the same or similar terms of employment or a portion is the same or similar
- has been vacated; and
- is supported by a clear description of any changes to pay or benefits.

**If the foreign national will be filling a position with different terms of employment (e.g. duties),** then the employer's past **ability to fulfill** the terms of the job offer should be considered as a reasonable indication of the employer's continued reasonable ability to fulfill that portion of the job offer. The balance of the assessment should then be limited to the employer's reasonable ability to fulfill the "additional" terms of the job offer. Other documents found in this Annex can be used to assess the employer's reasonable ability to fulfill the "additional" terms of the job offer.

### 3.24 Other Considerations, PR Stream –Factor B

Consider the following questions when evaluating the employer's recruitment and hiring process pertaining to the foreign national.

- Did the employer conduct activities before, during and after recruitment that provide the officer with confidence that the job offer will materialize?
- How did the employer find or identify the foreign national for this position?
- How did the employer determine that the foreign national was qualified for the job?
- How and when did the employer offer this job to the foreign national?
- How contact between the employer and foreign national was made (job ad, unsolicited application, placement agency)
- Was there third-party involvement?
- How did the employer assess the foreign national's suitability (interview, assessment of skills and qualifications through CV, proof of credentials, discussion of work experience, etc.)?
- Was the employer compensated (financial or otherwise) in exchange for the job offer?
- Is there evidence of formal offer made to the foreign national by the employer (e.g. letter of offer signed by both parties) and related terms and conditions?
- What level of direct contact was maintained by the employer with the foreign national throughout recruitment and the LMIA process?



- Does the employer intend to keep the job open until the foreign national arrives?

The recruitment and hiring process should be examined and assessed; bearing in mind that no one question/response is determinative (a global assessment of the different questions/responses must be considered when assessing the recruitment and hiring process pertaining to the foreign national).

### 3.25 Provincial/Territorial Websites – Factor D

The following list of websites is a starting point for information relating to past compliance of employers. It is not an exhaustive list. As officers discover new sites that could be used, these should be raised through their management to the TFWP GD Mailbox for inclusion in this list.

**Federal** (for federally regulated businesses and industries covered by the Canada Labour Code)

<https://www.canada.ca/en/employment-social-development/programs/employment-standards/federal-standards/employer-compliance/payment-orders.html>

<https://www.canada.ca/en/employment-social-development/services/health-safety/prosecution.html>

#### **Alberta:**

<http://work.alberta.ca/occupational-health-safety/convictions-under-the-OHS-Act.html>

<http://work.alberta.ca/employment-standards/esjudgments-search.asp>

<http://www.servicealberta.gov.ab.ca/find-if-business-is-licenced.cfm>

<https://www.alberta.ca/consumer-protection-complaints.aspx>

#### **British Columbia**

<http://www.bcest.bc.ca/decisions/2019/2019list.html>

#### **Manitoba:**

<http://www.manitoba.ca/labour/safety/compliance.html>

[https://www.gov.mb.ca/labour/standards/employer\\_fines.html](https://www.gov.mb.ca/labour/standards/employer_fines.html)

#### **New Brunswick:**

<https://www.canlii.org/en/nb/nbleb/>

## **Newfoundland and Labrador**

### **Nova Scotia:**

<http://www.novascotia.ca/lae/healthandsafety/documents/ohsfullformprosecutionswithsummary.pdf>

## **Nunavut & Northwest Territories**

### **Ontario:**

<https://www.labour.gov.on.ca/english/es/pubs/enforcement/archive.php>

### **Prince Edward Island:**

### **Québec:**

The province has already published the regulation on immigration consultants who states that any representative filling out an application for the provincial immigration program must meet certain criteria (which have an office in Quebec) and be registered with the government.

[CNESST: List of employers having violated the Act](#)

[Legis Quebec: Regulation respecting immigration consultants](#)

## **Saskatchewan**

<https://www.saskatchewan.ca/business/safety-in-the-workplace/complaints-enforcement-and-reporting-incidents/enforcement-outcomes-and-prosecution-statistics>

## **Yukon**

### **3.26 Additional Previous Years CRA Documents – Factor C**

Previous years documentation should only be used in conjunction with other documentation. Refer to the appropriate sections on CRA documents (e.g. T4 Remuneration Paid, etc.) for details on how to assess these documents.

## (a) ACTIVELY ENGAGED R200(5)– COMPANION TO DIRECTIVE ON GENUINENESS ASSESSMENT

### New information highlighted

**Effective Date:** 2018-01-15

**Modified Date:** 2021-07-09

### 1. Application

This companion directive applies to all streams.

### 2. Exemptions

Employers residing at the same address as the care recipient (i.e. the work location where the foreign national will perform their duties) of caregivers are exempt from demonstrating active engagement.

### 3. Guidelines

This directive provides instructions on how to determine whether the job offer is made by an employer that is actively engaged in the business in respect of which the job offer is made in Canada or whether the job offer is for employment in a private household in Canada.

**Businesses:** Actively Engaged means that the employer has an actual, bona fide operating business where an employee could work and that is providing a good or service that is linked to the job offer.

**Private Households (i.e. a good or service is not provided):** Actively Engaged means that the work location (i.e. where the foreign worker will perform their job duties) is at the employer's primary residence (e.g. as a domestic worker or caregiver); **OR**

**Caregiver positions only:** The employer's primary residence can differ as long the employer can legally make decisions on behalf of the care recipient residing at the work location. (e.g. a child with power of attorney hiring a caregiver for a parent).

**Table 1 – Actively Engaged – Requirements by Stream**

Low/High Wage or Primary Agriculture	Permanent Resident	Private Household Low/High Wage
<ul style="list-style-type: none"> <li>work location is in Canada</li> </ul>		
<ul style="list-style-type: none"> <li>the employer is currently operating a legitimate business providing a good or service where an employee could work</li> </ul>	<ul style="list-style-type: none"> <li>the employer is currently operating a legitimate business providing a good or service, where an employee could work;</li> <li>the employer has been in business for a minimum of one year</li> </ul>	<p><b>For Caregiver Positions:</b></p> <ul style="list-style-type: none"> <li>Proof of the care recipient’s address (i.e. the work location where the foreign national will perform duties) <b>must</b> be provided if the employer and care recipient reside at different addresses, regardless of the employer’s history with the TFWP.</li> <li><b>Exemption:</b> Employers who reside at the same address as the care recipient (i.e. the work location where the foreign national will perform duties) are not required to demonstrate active engagement.</li> </ul> <p><b>For Non-Caregiver Positions:</b>            Regardless of their history with the Program, all private household employers <b>must</b> provide proof of address to demonstrate that employment of the foreign national will take place at the employer’s primary residence.</p>

**4. Procedures**

**4.1 Preparation of Genuineness assessment**

Using Table 1 and the information gathered during the preparations for the Genuineness assessment (Directive on Genuineness Assessment steps 3.1 to 3.6) identify any issues related to Genuineness (a) Actively Engaged. Proceed to step 4.1.1 to begin the assessment.

### **Step 4.1.1**

The employer has demonstrated actively engaged if the following conditions have been met:

During the past two years, a positive LMIA has been issued **and** if the most recent decision was negative, the reason for the negative decision is not related to Genuineness (a). **Note:** Please refer to Table 1 in Genuineness A Directive for guidance pertaining to LMIA's from private household employers.

No inconsistencies/issues related to Genuineness (a) were found during the LMIA application and supporting document review and LMIA System information review.

No Genuineness (a) unresolved issues were identified during the review of the LMIA System i-scores and notes.

No Genuineness (a) issues were identified during the external search.

### **Step 4.1.2**

If all conditions met, the assessment of this genuineness factor is complete, proceed to the desk-aid to document the LMIA System.

### **Step 4.1.3**

If any one of these conditions has not been met, then proceed to step 5.1.1

**Note:** Officers have discretion to conduct a document-based assessment if they have reason to suspect that an employer is not actively engaged even if the employer has met the step 4.1.1 requirements.

## **5. Preparations for a document-based assessment of actively engaged**

### **Step 5.1.1**

Review the supporting documents provided with the LMIA application to determine if you are able to complete the assessment using the documents on hand. Proceed to step 6.1.1 if the documents on hand:

are found in Annex A or are an acceptable alternative; and  
address any Genuineness (a) issues found during preparations for the Genuineness assessment (Directive on Genuineness Assessment steps 3.1 to 3.6)

### **Step 5.1.2**

Proceed to step 6.1.1 if clarification or additional documents are required to complete the assessment.

### **Step 5.1.3**

Contact the employer to request an explanation or additional supporting documents. Provide the employer with a reasonable timeframe to collect and submit the documents.

## **6. Conduct a document-based assessment of actively engaged**

### **Step 6.1.1**

When the officer has the relevant supporting document(s) and, if required, an explanation from the employer, use Table 1 and Annex A, a non-exhaustive list of examples of supporting documentation, to determine if the employer is actively engaged.

### **Step 6.1.2**

If the employer has addressed any issues identified **and** has demonstrated that they are actively engaged, then the assessment of this genuineness factor is complete. Proceed to the desk-aid to document the LMIA System.

### **Step 6.1.3**

If the employer has not addressed the issues or demonstrated active engagement then contact the employer for clarification or, at the officer's discretion, request additional supporting documents as per Annex A.

### **Step 6.1.4**

If clarification or new documentation is received return to step 6.1.1 to repeat the document-based assessment in context of the new information.

### **Step 6.1.5**

If the employer's clarification and/or new documentation did not address the issues or demonstrate active engagement, then issue a negative assessment of this genuineness factor. Proceed to the desk-aid to document the LMIA System.