



PROTECTED B

For information

SUBJECT

Flagpoling at Ports of Entry

PURPOSE

The purpose of this briefing note is to provide you with an update on the issues encountered at Ports of Entry (POEs) in regards to flag poling, our legal obligations, and our next steps.

ISSUE

The Canada Border Services Agency (CBSA) is responsible for the administration of the *Immigration and Refugee Protection Act* (IRPA) and of its accompanying regulations (IRPR) at POEs. This includes the delivery of immigration services such as the issuance of work and study permits processing and permanent resident processing. The delivery of immigration related services for individuals who are within Canada falls under the responsibility of Immigration, Refugees and Citizenship Canada (IRCC).

The term 'flagpoling' is used to describe instances when an individual already in Canada travels to the Canada-United States border to leave Canadian soil and immediately turn around to seek re-entry into Canada (seek entry to the United States for the purpose of being refused [R27(3)]). In doing so, they are now eligible to receive immigration services from border services officers seeing as they are now considered to be international travellers.

BACKGROUND

Flagpoling has been a longstanding issue at POEs (with both Customs and Immigration implications) that predates the creation of the CBSA. Individuals choose to flagpole, because they prefer to receive same-day service from border services officers at the border rather than wait many months to have an application processed within Canada by IRCC. For example, a temporary foreign worker from a visa-required country, who is working in Canada and wishes to extend his/her work permit, can flagpole and receive a new Work Permit the same day, or wait four months to be processed inland by IRCC.

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Prior to 2007, the IRPA and its accompanying regulations were written in a manner that allowed for very few categories of immigration services (such as landings and work permit renewals) to be provided within Canada. In other words, flagpoling was the manner in which clients were required to access the vast majority of immigration services. Feedback received from clients confirmed that travelling to the nearest border crossing model was not ideal from a client service perspective. In 2007, IRCC made a regulation change which allowed more categories of persons to land in-Canada, with a goal to have better client service options. There would now be more options for the client – but it was still up to them. If they were travelling, they could still receive services upon arrival, but they also could make an appointment once in Canada, thereby avoiding subsequent trips to a border crossing.

These regulatory changes resulted in an immediate and pronounced decrease in the demand for immigration services (i.e. landings, work permit renewals, etc.) at ports of entry. However, between 2010 and 2012, IRCC closed 19 offices and eliminated front counter service across many Canada. In many cases, the remaining places where clients could obtain in-Canada services were no longer convenient. This also pushed up the wait times for appointments at these remaining locations. As a result, clients started going back to land border crossings to receive certain immigration services seeing as the in-Canada option was no longer preferable from a client service perspective. By doing so, they are able to receive services such as work permit renewals and confirmation of permanent residency on a same-day basis.

The *IRPA* and its accompanying regulations do not provide the CBSA with any discretion as to whether or not to provide immigration services to individuals seeking entry. In other words, individuals known to be flagpoling cannot be redirected to IRCC for processing.

From a CBSA perspective, individuals requiring inland service from IRCC should be able to obtain it in a timely fashion without needing to flagpole. The demand for inland services at POEs is an unfunded pressure that increases CBSA costs and workload, increases border wait times at primary and especially secondary and is attributed to growing overtime costs to the CBSA.

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STATUS

CBSA has base funding to provide immigration services, including 250,000 permanent resident landings. This permanent resident funding stayed at the same level despite repeated increases in the Government's target immigration levels each year. CBSA lands approximately 85% of all permanent residents, therefore these increases to the total number applied pressure to the Agency. The recent Multi-Year Levels Plan Treasury Board Submission is the first funding for increased landings that IRCC and CBSA have received in more than a decade. The full volume of landings will now be funded appropriately for both IRCC and CBSA – including all the Permanent Resident landings that are considered to be flag pole cases.

The increased funding for the CBSA related to the permanent resident stream is certainly welcomed; however this does not address the instances of flagpoling for the temporary resident (worker or student) lines of business. Maintaining the status quo is growing increasingly unsustainable for POEs. During peak periods, local management is increasingly forced to decide between opening additional primary inspection lines and providing immigration services to clients who flagpole. Growth in flagpoling volumes is expected to continue, alongside increases across other lines of business. Until such time as additional funding can be translated into additional processing capacity (i.e. more officers, new technology, etc.), the Agency will continue to be required to leverage the existing officer cadre to meet demand for services across all business lines.

NEXT STEPS

The CBSA and IRCC have initiated discussions to examine ways to reduce instances of flagpoling at the POE and moving the workload away from the POE. As well, Programs Branch will be exploring possible regulatory changes with IRCC on implied status which would streamline the process and reduce the pressures at the POE.

Caroline Xavier, Vice-President

Operations Branch



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IMMIGRATION PROCESSING AT PORTS OF ENTRY

For the Minister

PURPOSE

To provide an overview and update on the issues encountered at Ports of Entry (POEs) in regards to immigration processing.

ISSUE

The Canada Border Services Agency's (CBSA) funding levels has only minimally increased since its creation, while the growth in secondary immigration processing has outpaced the number of border services officers (BSOs) required. Individuals already in Canada waiting for their extension applications to be processed by Immigration, Refugees and Citizenship Canada (IRCC) (e.g., work/study permit) may choose to travel to the border to immediately seek re-entry into Canada (i.e., flagpoling) to receive same-day service by the CBSA. This also adds to the secondary immigration volumes at POEs.

BACKGROUND

The CBSA is responsible for the administration of the *Immigration and Refugee Protection Act* and its accompanying regulations at POEs. This includes the delivery of immigration services such as the issuance of work and study permits and permanent resident processing. The delivery of immigration-related services for individuals who are within Canada falls under the responsibility of IRCC.

The creation of the CBSA and the subsequent transfer of POE resources from IRCC in October 2004 provided a baseline of BSOs required to perform immigration-related activities at POEs.

Fiscal year 2004-2005 was used as a baseline to establish the number of temporary resident applications processed by the CBSA. Permanent resident levels are established by Parliament on a yearly basis and were set to be between 220,000 and 245,000. Utilizing the officers transferred from IRCC, the following baseline of facilitative activities were established:

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Port of Entry Processing		
Immigration Function	Baseline (2004-2005)	2016-2017*
Work Permit	113,180	203,656
Study Permit	64,411	155,097
Temporary Resident Permit	10,273	8,989
Permanent Resident Processing	220,000 – 245,000	216,243

*Statistics as of March 9, 2017

In 2010, the Comptrollership Branch established a new baseline of processing 250,000 permanent residents with the assumption that 14% of permanent residents (or 35,000) will be processed at IRCC inland offices with the remaining 215,000 being processed at POEs.

In 2013-2014, the CBSA secured \$50.5M over five years with \$15.7M ongoing funding related to the “Modernizing the Temporary Resident Program Funding Model” Memorandum to Cabinet (MC). However, this MC only provided funding related to the increase in temporary resident processing of citizens from India, Brazil and China.

During this fiscal year (2016-2017), the CBSA secured over \$205M over five years with \$26.9M ongoing, to support the proposed increase to the national immigration levels of 300,000 permanent residents. This will close the finding gap and provide the appropriate level of funding for the CBSA to land all permanent residents, including those who flagpole.

CONSIDERATIONS

The increased funding for landing permanent residents, and the slight increase in funding for processing temporary residents will add additional capacity to reduce secondary processing wait times. However, the funding does not cover flagpoling of temporary residents (worker or student). Based on historical data, this new funding will temporarily translate into additional capacity to address pressures related to the temporary resident lines of business.

While the CBSA will gain extra capacity to reduce immigration secondary times, maintaining the status quo related to the processing of temporary residents (work, student and temporary resident permit holders) may become unsustainable for POEs. Changes are needed from IRCC in their service delivery model to reduce in-Canada processing times. Current IRCC wait times for a work permit extension with the same employer is 117 days. These long wait times push applicants to obtain same day service at the POE. Additionally, policy and regulatory changes are needed to change the way implied status is applied at the POE. Currently, an individual who has made an application to extend their status and leaves Canada will lose their ability to continue to work or study when seeking re-entry until IRCC renders a decision on their extension application. This causes individuals to make a subsequent application at the POE which adds to the POE's workload and also creates a burden on clients. The IRCC Minister has the discretion

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to create a public policy to effect these proposed changes and formalize it by amending the regulations.

STATUS

The Southern Ontario Region has drafted an initial operational plan related to the processing of individuals who seek to flagpole to obtain immediate service at the POE. The draft operational plan is currently being reviewed by the Border Operations Directorate. The operational plan involves the examinations for those who flagpole to future off-peak periods rather than when they arrive. Initial discussions with the Canadian Bar Association about this new service delivery model were undertaken, they have indicated they will likely engage the Minister and the Prime Minister as they feel this new service delivery model will create undue hardship on their clients. It will likely garner political attention given this government's approach to increasing the number of permanent residents and attracting highly skilled temporary resident workers and students. The new service delivery model is scheduled to be implemented on May 1, 2017.

NEXT STEPS

The CBSA will continue to engage IRCC on their service delivery model in addition to press for changes related to the POE processing of individuals who have applied for an in-Canada extension application.

John Ossowski, President

ATTACHMENT

1. **Statistics: Immigration Processing at Ports of Entry**

Approved by: Caroline Xavier, Vice-President
Branch: Operations BranchDate: May 1, 2017
Classification: Protected B

ISSUE SHEET

Temporary and Permanent Resident Processing at Ports of Entry

Suggested Speaking Bullets:

- The Canada Border Services Agency (CBSA) anticipates that an issue with immigration processing at ports of entry (POEs) will present tangible challenges to its operations.
- This will impact the delivery of immigration services such as the issuance of work and study permits and permanent resident processing. The delivery of these services for individuals who are already within Canada generally falls under the responsibility of Immigration, Refugees and Citizenship Canada (IRCC).

Context:

Issue:

Growth in immigration processing at POEs, including from IRCC clients who choose to leave the country temporarily to receive immediate services (i.e., flagpoling), has outpaced Agency funding and officer staffing levels.

Background:

In 2004-2005, following the creation of the CBSA, a baseline officer complement for immigration-related activities at POEs was established, with permanent resident levels set between 220,000 and 245,000 annually. Although prior to 2007 flagpoling was the mechanism to access the vast majority of immigration services, the IRCC made a regulation change following client complaints, which afforded them the option of receiving services either by flagpoling or by visiting an IRCC office in Canada.

Between 2010 and 2012, as part of a deficit reduction action plan measure, the IRCC closed 19 offices and eliminated front counter service across Canada. This action increased the average wait time for appointments at remaining IRCC offices and, as a result, indirectly forced clients to go to land border crossings to receive certain immigration services. Flagpoling is a preferred option for many in lieu of multiple-month wait periods for processing within Canada by the IRCC. For example, a temporary foreign worker who is working in Canada can either flagpole and receive a new work permit the same day or wait an average of four months for being processed inland by the IRCC.

Flagpoling by persons seeking permanent residency presents the largest challenge in the Southern Ontario Region (SOR). In the Quebec Region, the majority of flagpoling is conducted by clients seeking temporary resident extensions (mostly work and study permits).

Current Status:

Permanent residents:

The recent Multi-Year Levels Plan (MYLP) Treasury Board Submission is the first funding (\$205 million over five years) for increased landings (300,000 permanent residents annually) that the IRCC and the CBSA have received in more than a decade. This increased funding for landings will add capacity to reduce secondary processing wait times and includes those who may be flagpoling for service.

The first submission approved by Treasury Board (TB) on December 8, 2016, confirmed funding of \$6.6M to cover increased immigration activities in the last quarter of the 2016-17 fiscal year, and to start preparing for a permanently higher immigration baseline.

The follow-up submission, approved by TB on April 13, 2017, sought funding of \$203.0M for



fiscal years 2017-18 through 2021-22 and \$26.8M ongoing. TB approved the requested funding with the following two restrictions:

Approximately \$19.7M of the \$28.7M in contingency funding over 5 years (2017/18-2021/22) and \$2.4M ongoing were frozen. This amount remains available for any project cost overruns related to IT and College infrastructure, and therefore could be accessed through a business case submission with proper rationale for expenditure.

As policy coverage from the MC was only provided up to 2019, TB is freezing 50% of net salary and O&M starting in 2020, pending confirmation of a baseline annual target of 300,000 permanent residents.

As well, the IRCC has been actively engaged on the issue of flagpoling for permanent residents and recently introduced some alternative processing measures, including evening and weekend extended office hours and landings by phone. Should these measures be proven successful, they could allow the Agency more flexibility in how landings are processed to relieve pressure.

Temporary residents:

While the MYLP includes funding for all permanent resident landings, the funding does not address the flagpoling workload for the temporary resident (worker or student) lines of business. In 2013-2014, the CBSA did secure \$47.45 million over five years as part of the Modernizing the Temporary Resident Program Funding Model Memorandum to Cabinet (MC). This MC funding related to the increase in temporary resident processing attributed to citizens from India, Brazil, and China only. The majority of the funding was allocated for processing at airports and post-border enforcement work.

While the CBSA will gain capacity to reduce immigration secondary times for permanent resident processing, temporary resident processing will continue to present operational challenges. The recent decision to lift the visa requirement for Mexican nationals will increase the temporary resident permit workload because Mexican nationals are now able to arrive in Canada and obtain a work permit at the POE, rather than at overseas missions via the IRCC.

Refugee Claimants

An additional pressure is the increase of refugee claimants at the port and between ports of entry. In 2010, the Agency received additional funding of approximately \$33M ongoing to accommodate measures in Refugee Reform and the expected 22,500 in-Canada claims per year. However, the number of claimants the Agency processes per year is now above this and it has created another pressure.

Next Steps:

The CBSA and the IRCC will continue discussions on ways to reduce flagpoling. Some changes would involve regulatory amendments, but in the meantime other options are being explored. As an example, the SOR is considering an appointment schedule for clients arriving on the weekend where their examinations would be deferred to a future date during the week.



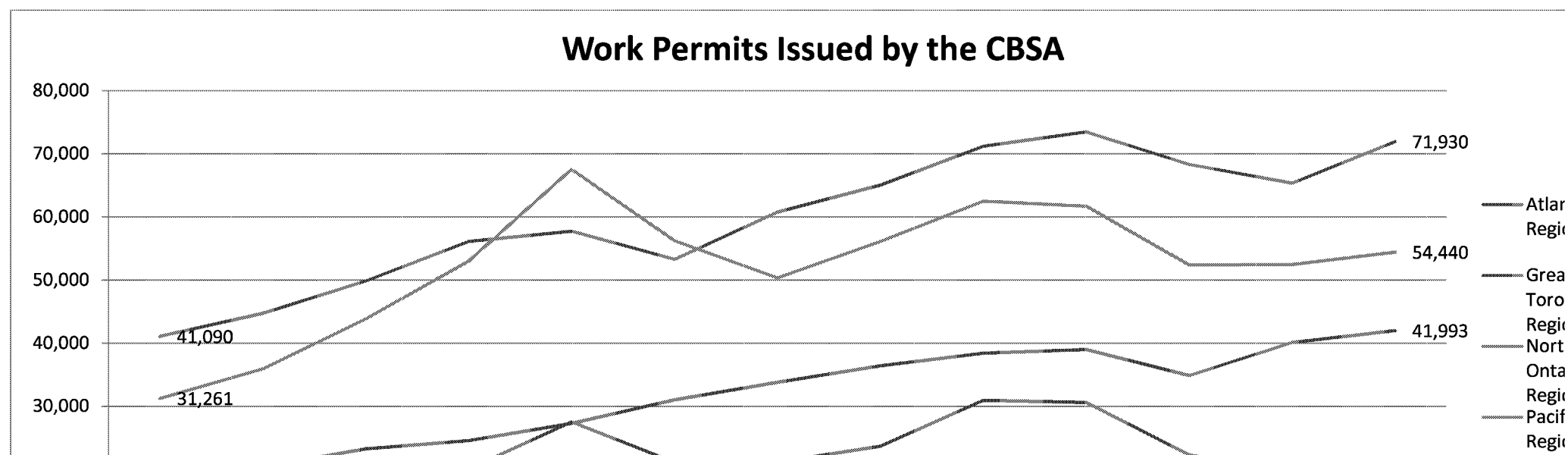
Work permits issued by the CBSA broken down by region

	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	2015/2016
Atlantic Region	1,263	1,342	1,815	2,542	2,964	3,290	3,082	3,411	4,146	4,802	4,425	4,481
Greater Toronto Region	41,090	44,744	49,853	56,117	57,750	53,273	60,759	65,063	71,208	73,468	68,332	65,340
Northern Ontario Region	3,358	3,873	3,657	3,490	3,939	3,997	4,269	4,445	4,000	3,786	3,170	2,977
Pacific Region	31,261	35,922	43,830	52,999	67,539	56,226	50,355	56,104	62,511	61,698	52,384	52,450
Prairie Region	9,038	11,320	14,536	20,077	27,534	21,132	21,143	23,696	30,948	30,596	22,287	19,359
Quebec Region	17,271	20,412	23,270	24,577	27,291	31,015	33,802	36,437	38,420	38,994	34,895	40,132
Southern Ontario Region	9,081	9,174	10,011	10,193	9,787	10,381	12,054	11,931	11,893	10,256	8,184	11,541
Missing & Invalid	818	10	7	4	12	5	9	10	14	2	7	83
CBSA	113,180	126,797	146,979	169,999	196,816	179,319	185,473	201,097	223,140	223,602	193,684	196,363

Source: CIC DWS - Enterprise Data Warehouse - Temporary Resident Datamarts

Created by: AG-PRU

Date: March 8, 2017





2016/2017
(as Mar. 7)
4,809
71,930
2,683
54,440
16,699
41,993
11,072
30
203,656

