

Bouchard, Jennifer (IRCC/IRCC) (she, her | elle, la)

From: Immigration Representatives / Représentants immigration (IRCC)
Sent: July 9, 2024 2:30 PM
To:
Cc: Immigration Representatives / Représentants immigration (IRCC)
Subject: FW: Question re: Corporate Restructurings for ICT Work Permit Holders IMP -LMIA Exempt - Confusing Feedback From IRCC After Webform Submission --REP-2024-0129 -- DUE21-Feb-24
Attachments: ICT.Webform.Cover LetterL Change .Name of Employer HS V 7.docx

Hello,

We apologize for the delay in responding to you.

Please see our response to your question:

We strive to respond to all inquiries clearly and provide as many relevant links and resources as possible. However, due to the nuances in interpretation, there may be times when responses do not meet the requester's expectations.

To address your concerns, we've broken down your questions as follows:

Question: How do we ensure that if there is a compliance review, the client can be satisfied that they will not be found to be non-compliant if IRCC refuses to accept updates on the workers' files?

Response: In all cases, both companies should keep all documents about the merger or takeover in case of a compliance inspection. Documents about the employment of the temporary worker needs to be kept for 6 years from the date the work permit was issued. You can also fill out a [Voluntary Disclosure](#) form if the conditions in the offer of employment change.

Question: How can the workers ensure that, if there are concerns by CBSA at the border, they can demonstrate that their employment information says one thing, and the work permit says another?

Response: If the takeover organization is a successor in interest, in that it has substantially assumed the interests, obligations, assets and liabilities of the original organization (wholly or partially) and continues to operate the same type of business as the original organization, the takeover organization remains the "employer" for the purpose of the existing work permit as well. In this scenario, the temporary worker is not obligated to obtain a new work permit and will continue to be authorized to work in Canada for the duration of the period stated on the existing work permit as long as both of the following apply:

- The takeover organization meets the requirements under which the LMIA-exempt work permit was issued (for instance, a qualifying relationship for intra-company transferee), or the takeover organization assumes the LMIA contract.
- The worker's employment conditions as per the original offer of employment (for example, the wages, duties and location) have not changed.

It is always advisable that you provide your employee with the complete documentation to reflect the employer-employee relationship. They should also have the contact information of the employer readily available. If there are any questions or concerns, CBSA officers can directly contact the employer to confirm the details.

Question: Finally, how can we be sure that our position regarding success-in-interest and the qualifying relationships are correct - must we submit 11 new work permits (contrary to the advice on the IRCC website) and have them refused?

Response: Changes in ownership structure should not require a new LMIA or offer of employment if the new organization assumes the previous owner's assets and liabilities (including those of the previous owner relating to the hiring and retention of temporary workers [for instance, where a successor in interest can be demonstrated]).

The new employer doesn't need to submit a new offer of employment and the worker doesn't need a new work permit if both of the following apply:

- both companies (the original employer and the new employer) run the same type of business
- none of the work permit conditions change, including the following:
 - wages
 - job duties
 - work location

If the type of business, the wages, the job duties or the work location changes, affected workers will need to get new work permits. In this case, the new employer will need to either submit a new offer of employment for each worker or get a Labour Market Impact Assessment (LMIA) (if the job is not LMIA-exempt). These workers can't keep working until they get their new work permits.

Successor in interest

To establish a successor in interest, the successor entity must demonstrate that it has substantially assumed the interests and obligations, assets and liabilities of the original owner and that it continues to operate the same type of business as the original owner.

If the takeover organization is a successor in interest in that it has substantially assumed the interests, obligations, assets and liabilities of the original organization (wholly or partially) and continues to operate the same type of business as the original organization, the takeover organization remains the "employer" for the purpose of the existing work permit as well.

The temporary worker is not obligated to obtain a new work permit and will continue to be authorized to work in Canada for the duration of the period stated on the existing work permit as long as both of the following apply:

- The takeover organization meets the requirements under which the LMIA-exempt work permit was issued (for instance, a qualifying relationship for intra-company transferee), or the takeover organization assumes the LMIA contract.
- The worker's employment conditions as per the original offer of employment (for example, the wages, duties and location) have not changed.

For more information, please consult the following webpages: [Employer name changes and corporate restructurings - Canada.ca](#)

For more information on Employer Responsibilities please consult: [Hire a worker without an LMIA: after you hire a temporary worker - Canada.ca](#) and [Hire a worker without an LMIA: employer inspections - Canada.ca](#)

We trust this information is useful.

Thank you kindly,

The Immigration Representatives

From:
Sent: January 22, 2024 6:40 PM
To: Immigration Representatives / Représentants immigration (IRCC) <IRCC.ImmigrationRepresentatives>

Representantsimmigration.IRCC@cic.gc.ca; Parisa Ansari <parisa@brumimmigration.ca>

Subject: Fwd: Question re: Corporate Restructurings for ICT Work Permit Holders IMP -LMIA Exempt - Confusing Feedback From IRCC After Webform Submission

Cover Letter Attached.



----- Forwarded message -----

From:

Date: Mon, Jan 22, 2024 at 6:34 PM

Subject: Question re: Corporate Restructurings for ICT Work Permit Holders IMP -LMIA Exempt - Confusing Feedback From IRCC After Webform Submission

To: <IRCC.ImmigrationRepresentatives-Representantsimmigration.IRCC@cic.gc.ca>

Cc:

Dear IRCC Immigration Rep Help Officer,

I hope your week has been pleasant so far.

I'm writing after receiving conflicting and confusing emails from IRCC following the submission of webforms for a corporate client. This client has a substantial number of IMP ICT Significant Benefit WPs for specialized workers whose work permits are expiring in a year or so. This client was recently acquired by a multinational company. We provided through a webform for all workers affected by the acquisition, and submitted substantial documentation to demonstrate that the acquiring corporation is a success-in-interest, is the "same employer" and that a qualifying relationship continues to exist between the foreign entity and the Canadian entity. We were confident that a webform would address the issue, ensuring that IRCC was aware of the changes and would add a note to each worker's file in the event that there were issues at the port of entry and issues when the work permits are renewed. We have done the same for another corporate client in 2021, and received no response or complaints from IRCC. These responses below have left us scratching our heads.

We received the following variety of responses:

1. Update the Use of Rep (it was correct!) and send it to the IRCC Webform for outside Canada applications.

Good day

Thank you for contacting Immigration, Refugees and Citizenship Canada (IRCC).

We have received the Use of representative (IMM5476) form; however, we are unable to process it since some information is missing and requires further clarification.

Under section 10 of the Immigration and Refugee Protection Regulations, representatives and clients are required to provide all the information requested on the form unless the question states if known or if applicable.

Therefore, please make sure to:

- Include the type of application at question 3:
 - temporary residence (please specify, for example: work permit, study permit, visitor record, etc.);
 - permanent residence,
 - permanent resident card, or
 - citizenship.
- Ensure that the appropriate sections of the form have been originally signed and dated in the proper format by all relevant parties.

Once the form is completed, as your request is for an outside Canada application, please use the visa office specific IRCC Web form to send it to the responsible Canadian visa office for your area in order to authorize a representative.

In order to contact the visa office for your area, please consult the list of visa offices outside Canada on our website.

Once you have selected the office you wish to contact, you will be presented with the different ways you may contact them.

Please make sure to answer Yes to the question *Is your application being processed by an office OUTSIDE Canada?* in order for your enquiry to be directed to the responsible office.

We hope the information provided is helpful in assisting you with your enquiry.

We would also like to suggest the following online services that might be helpful to you with any immigration, refugee and/or citizenship future requests:

- Download application forms and guides
- Change of address
- Check your application status
- Help Centre - To find answers, you may consult the different sections or type keywords related to your question.

Sincerely,

Basel, agent # 4843

Immigration, Refugees and Citizenship Canada

<https://www.canada.ca/en/services/immigration-citizenship.html>

2. Refusal to Accept Documents Updating IRCC Regarding the Restructuring

"We verified the information you provided and can confirm that it is not necessary to provide additional documentation or update your information if you do not currently have an application in process with IRCC. Since you currently do not have an application in process, the information you provided will not be added to your file. If applicable, we invite you to include this information when you submit a new application.."

3. A General Note Regarding A Temporary Public Policy

• "A temporary public policy is in effect for temporary workers already in Canada who are changing jobs or employers and have secured a new job offer. They can get approval to start working in their new job, even while their work permit (WP) application is being fully processed.

To benefit from this public policy, a worker already in Canada must be:

- A WP holder or a worker who can work without a WP, AND
- Have a valid Labour Market Impact Assessment (LMIA) or can be hired in an LMIA-exempt situation using the employer portal"

4. An Offer of Information Regarding Corporate Restructurings

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- "For information on the impact of corporate restructurings at Canadian companies for foreign workers, please consult our website.
- <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/guide-mergers-acquisitions.html>"
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5. An Expression of Confusion Regarding The Nature of the Webform

"We verified the information you provided and we were unable to determine the nature of your enquiry, we invite you to fill out a new IRCC Web form. Please upload an explanation letter and supporting documents (if applicable) in the field reserved to that effect."

Questions: How do we make sense of these conflicting responses? How do we ensure that if there is a compliance review, the client can be satisfied that they will not be found to be non-compliant if IRCC refuses to accept updates on the workers' files? How can the workers ensure that, if there are concerns by CBSA at the border, they can demonstrate that their employment information says one thing, and the work permit says another? Finally, how can we be sure that our position regarding success-in-interest and the qualifying relationships are correct - must we submit 11 new work permits (contrary to the advice on the IRCC website) and have them refused?

We do not have the Officer names or identifying numbers for comments 2-5. They were just signed Immigration Refugees and Citizenship and came from the "Do Not Respond to This Email" email typical of webform responses.

I have attached the cover letter we sent (similar for each worker) for your review and for context.

Thank you for your help and your service to Canada.

Regards,