



**Employment and  
Social Development Canada**

Access to Information and  
Privacy Operations Division  
140 Promenade du Portage  
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Gatineau, Quebec K1A 0J9

**Emploi et  
Développement social Canada**

Opérations de l'accès à l'information et de la  
protection des renseignements personnels  
140, promenade du Portage  
Phase IV, niveau 12, arrêt postal 1203  
Gatineau (Québec) K1A 0J9

JUL 15 2016

*Our file - Notre référence*  
A-2016-00419 / WM

Mr. Jacobus Kriek  
Matrixvisa  
440-10816 Macleod Trail South  
PO Box: 362  
Calgary, Alberta T2J 5N8

Dear Mr. Kriek:

This is in response to your request submitted under the *Access to Information Act* (the Act), received at Employment and Social Development Canada on June 6, 2016, and which reads as follows:

***"Please provide the most recent national policy/directive about Owner-Operator LMIAs. Please also provide a copy of the Owner-Operator guidance document developed by Western Territories of Service Canada (Vancouver and Edmonton) Randy Jennings a senior Development officer of Service Canada, Caleb Lam and Shareen Ginema communicated in November about guidance on Owner Operator LMIAs during Nov 2015."***

You will find attached the documents you have requested. You will note that some pages qualified for partial exemption pursuant to subsection 16(2) of the Act. A copy of the provision is enclosed.

Please be advised, the documentation contained within does not reflect nationally approved guidance on owner-operator LMA applications.

You are entitled to complain to the Information Commissioner concerning the processing of your request within 60 days of the receipt of this notice. In the event you decide to avail yourself of this right, your notice of complaint should be addressed to: Office of the Information Commissioner of Canada, 30 Victoria Street, 7<sup>th</sup> Floor, Gatineau, Quebec K1A 1H3.

This completes the processing of your request. Should you have any questions, do not hesitate to contact William MacLeod at 819-654-6976, or by email at [william.macleod@hrsdc-rhdcc.gc.ca](mailto:william.macleod@hrsdc-rhdcc.gc.ca).

Sincerely,

A handwritten signature in black ink, appearing to be 'Alain Beaudry', with a stylized, cursive script.

Alain Beaudry  
A/Manager  
Access to Information and Privacy Operations

Encl.

# Owner-Operator Guidance - TFW in WT



This page is presented by the Business Expertise Team in WT, for *internal reference* by officers delivering the Temporary Foreign Worker program in the Vancouver and Edmonton delivery sites. It is part of the TFW in WT Reference Pages.



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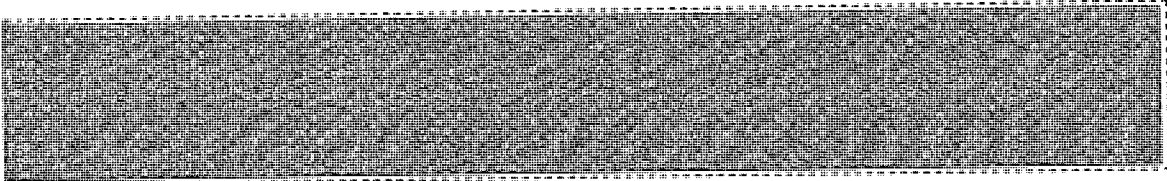
## Key Considerations

1. [REDACTED] assessing officers must be reasonably satisfied that the foreign national (FN) on LMIA is or will be Principal Owner or Co-owner of the business in Canada.
2. The onus is on the ER to provide information/documentation to prove FN's shareholding/ownership status.
  - If documents linking the FN with ownership of the business (e.g. Share Certificate, Notice of Articles, Central Securities Register...) are voluntarily submitted with the application, these should be considered sufficient proof of the FN's relationship to the business. [REDACTED]
  - If no document is provided and/or owning-operating of business is contingent on LMIA and WP, this anticipatory situation may be accepted with consideration given to ER's overall preparation and efforts towards owning-operating the business [REDACTED]
  - [REDACTED] At assessing officer's discretion, this can be further supported by requesting a professional attestation specifying the anticipated shareholding/ownership status of the FN in the business.
  - If, after considerations described above, the assessing officer is still not satisfied with the response from the ER, a decision can be made that [REDACTED] does not apply in the anticipatory situation.
3. [REDACTED]
4. When assessing labour market factors, for Principal Owners, the focus is on job creation/retention and/or skills transfer. For Co-owners, the focus is on job creation/retention and/or skills transfer in addition to wages and working conditions.
5. For High-wage Owner-operator applications, Transition Plan requirements apply.
6. For Low-wage Owner-operator applications, CAP requirements apply. In addition, Employment

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- Contract and worker protections are also required.
- 7. In FWS, under [REDACTED] continue to check off [REDACTED] even though they are not assessed for Principal Owners.
  - 8. For confirmations, duration of employment can be for one year or less depending on the timelines/benchmarks regarding job creation/retention and/or skills transfer. In FWS, under [REDACTED] ensure to check off [REDACTED] and/or [REDACTED] when applicable. These measures will allow TFWP to follow-up on ER's progress in assessing IRPR 203 (3) (g) when they have to submit another LMIA for the FN.
  - 9. For confirmations, ensure to add the following CIC note:

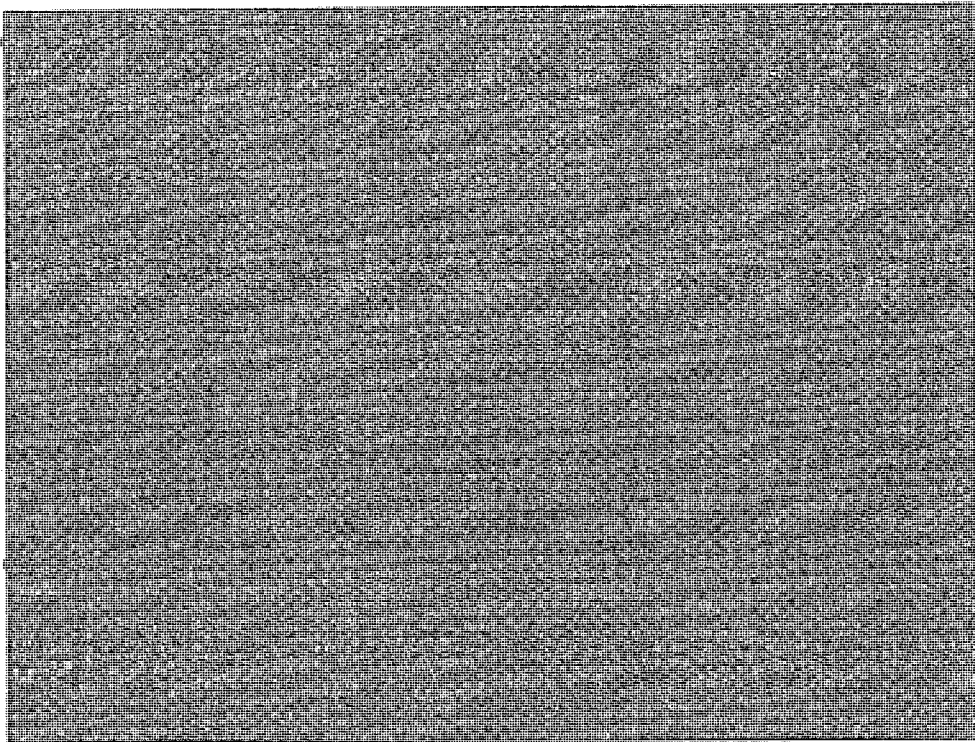


Common Scenarios

Scenario 1: New Start-up Company in Canada

- Details
- Business is a start-up company in Canada.
  - TFW is 100% owner.
  - Business is not in operation in Canada yet and is contingent on LMIA and WP.

Considerations



Scenario 2: Completed Purchase/Ownership Change of Existing Business in Canada

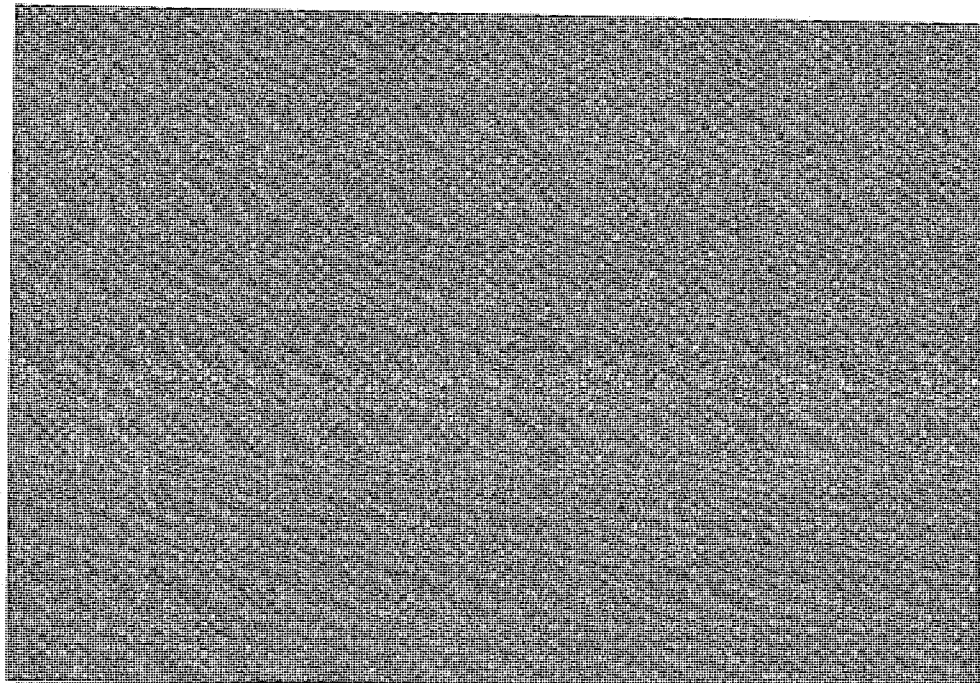
- Details
- Business has been in operation in Canada under Canadian ownership.
  -

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TFW has bought out the 100% of the existing business.

- LMIA includes shareholding/ownership documents indicating purchase/ownership change has been completed and that TFW is 100% owner of business (e.g. Share Certificate, Notice of Articles, Central Securities Register as well as Share Purchase Agreement, etc.)

#### Considerations

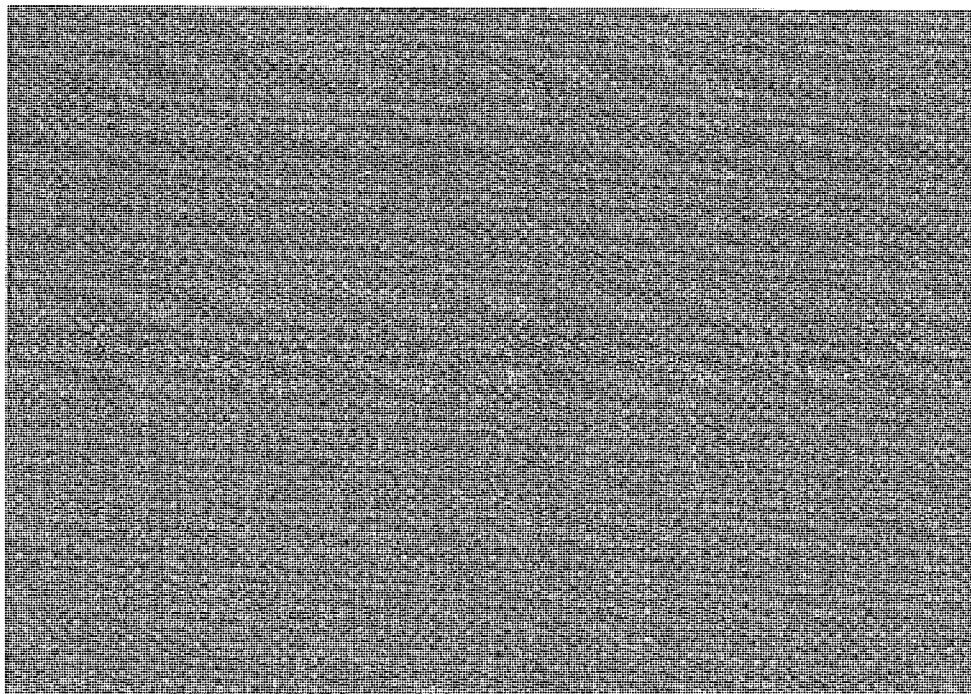


### Scenario 3: Pending Purchase/Ownership Change of Existing Business in Canada

#### Details

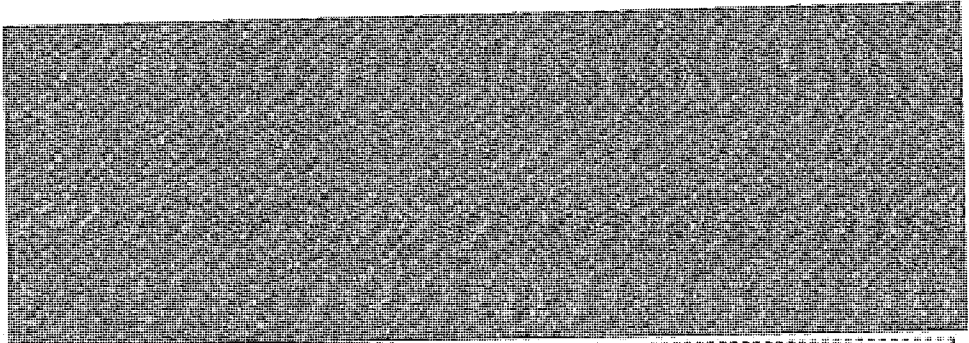
- Business has been in operation in Canada under Canadian ownership.
- Current owner intends to sell 100% of business to the FN, but completion of purchase/ownership change is contingent on LMIA and WP.

#### Considerations

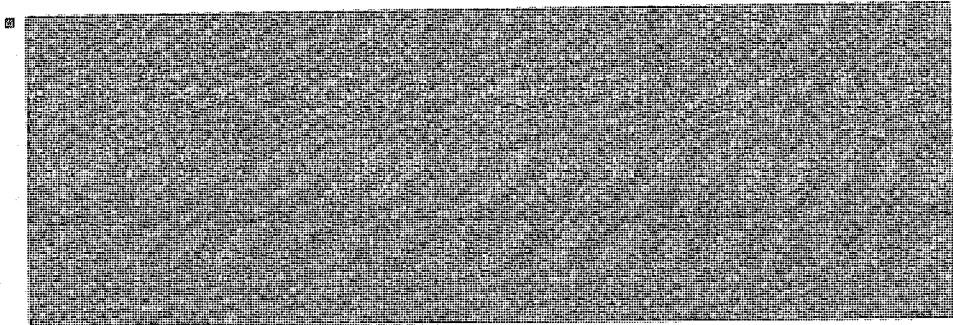


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Based on the LMIA application and our telephone conversation dated XXXX-XX-XX, Owner-operator policy under TFWP does not apply in this case. In order for Service Canada to issue a positive LMIA, all regular program requirements must be met. For detailed information about TFWP, please visit: [www.esdc.gc.ca/eng/jobs/foreign\\_workers//index.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers//index.shtml).

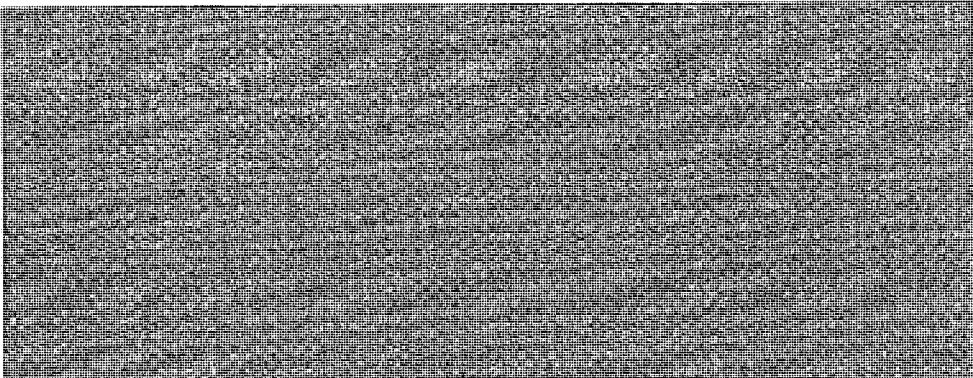


**Scenario 4: Partial Purchase into Existing Business in Canada**

**Details**

- Business has been in operation in Canada under Canadian ownership.
- FN is buying into the business to become a part owner (10%, or 20%, or 50%, or 80%) instead of 100% owner.

**Considerations**



**See Also**

- 
- Owner-Operators Q & A - TFW in WT

**Updated**

2016-01-08

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Categories: BE Updates - TFW in WT | TFW Program - WT Region Reference Pages | All Program  
Officer Topics - TFW in WT

# Owner-Operators Q & A - TFW in WT



This page is presented by the Business Expertise Team in WT, for *internal reference* by officers delivering the Temporary Foreign Worker program in the Vancouver and Edmonton delivery sites. It is part of the TFW in WT Reference Pages.



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## Purpose

To Provide TFWP staff with guidance on the assessment of Owner/Operator LMIA applications.

## Background

When assessing an application for an LMIA, TFWP officers consider seven labour market factors, identified in Section 203(3) of the IRPR, to determine what impact the employment of the foreign worker is likely to have on the Canadian labour market. When assessing Owner Operator applications,

the focus is on the following two:

- IRPA 203(3)(a) whether the employment of the foreign national will or is likely to result in direct job creation or job retention for Canadian citizens or permanent residents; and, for subsequent LMIA,
- IRPA 203(3)(g) whether the employer has fulfilled or has made reasonable efforts to fulfill any commitments made, in the context of any assessment that was previously provided under subsection (2), with respect to the matters referred to in paragraphs (a), (b) and (e)

## Definition of Owner-Operator

For the purpose of the TFWP, owner/operators are defined as:

- Foreign nationals who hold a share in a business located in Canada, and



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- Are classified under a National Occupational Classification (NOC) 0, A or B occupation.

## Principal Owner versus Co-owners

	Principal Owner as TFW	Co-owner as TFW
<b>Definition</b>	Person who has the largest share in the business or the equal shareholder who has been designated as the "Employer"	Person who owns some share(s) in the business
<b>LMIA Submission</b>	<ul style="list-style-type: none"> <li>■ Can be Employer Contact</li> <li>■ Can sign LMIA and other documents</li> <li>■ Can make the payment</li> </ul>	<ul style="list-style-type: none"> <li>■ <b>Cannot</b> be Employer Contact (must be Principal Owner)</li> <li>■ <b>Cannot</b> sign LMIA and other documents</li> <li>■ <b>Cannot</b> make the payment</li> </ul>
<b>Assessment</b>	<ul style="list-style-type: none"> <li>■ Emphasis on job retention and job creation</li> <li>■ Wages, working conditions <b>NOT assessed</b></li> <li>■ Recruitment waived as per Variation</li> </ul>	<ul style="list-style-type: none"> <li>■ Emphasis on job retention and job creation</li> <li>■ Wages, working conditions <b>assessed</b></li> <li>■ Recruitment waived as per Variation</li> </ul>

## Owner-operator Qs & As

### Shareholder

- *The foreign national owns shares of a foreign company, and the foreign company is the majority shareholder and controls the ownership of the Canadian business. Is the foreign national considered an owner-operator?*

For the purpose of LMIA assessment, the foreign national must be a direct shareholder and owner of the Canadian business to be considered an owner-operator.

- *In cases where there are multiple owners, is there a minimum percentage of shares that the foreign national must own in order to be considered an owner-operator?*

In cases where there are multiple owners of a business, the principal owner (e.g. the largest shareholder or the equal shareholder who has been designated as the "employer") must act as the "employer" and apply for LMIAs to Service Canada for the other co-owners as "workers".

### LMIA exemption with CIC/IRCC

- *Do employers need to check with CIC/IRCC for a possible LMIA exemption?*

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**Updated** It is up to the employers to check with CIC/IRCC and decide if they would like to have their LMIA assessed. If they submit an LMIA, we are obligated to assess it regardless whether they have checked with CIC/IRCC or not.

- ***The ER/TP indicated that, "the employer is applying for an LMIA because CIC/IRCC refused their work permit application". Can Service Canada still issue a confirmation for the LMIA application?***

Yes, if CIC/IRCC determines the applicant does not qualify for an exemption, the owner/operator will be required to apply for an LMIA at HRSDC/Service Canada before applying for a work permit at CIC/IRCC, where Service Canada will issue either a positive or negative LMIA subject to Section 203 of IRPR.

Service Canada needs to assess the owner-operator LMIA application according to TFW program requirements, including

1. Eligibility,
2. Federal-Territorial/Provincial Agreements,
3. Genuineness,
4. Language Restrictions,
5. Labour Market Factors.

## Genuineness and Documentation

- ***What documents can be requested from the employer to demonstrate that the FN listed on the application is an owner-operator?***

- ***How should officers assess genuineness when the business is not in operation (eg. ER indicates that the business will begin to operate when the FN arrives)?***

## Cap

- ***Are low-wage owner-operators exempt from cap?***

Owner-operators are **not** on the list of exemptions in the Cap directive. Owner-operators are expected to complete Schedule E (if applicable).

## Transition Plan

- ***Are high-wage owner-operators exempt from transition plan?***

Owner-operators are **not** on the list of exemptions in the Transition Plan directive. Owner-operators are expected to complete a Transition Plan (if applicable).

## Language Requirements

- *The LMIA and ER indicate that there is no language requirement. Is that acceptable?*

**Updated** Owner-operator LMIA applications must meet the TFW program requirements, including language requirements. Given that owner-operator positions fall under NOC 0, A, or B, normally either English or French is required for at least some of the duties. If the LMIA or the ER indicate "no language is required," assessing officer would clarify with the ER how those duties will be performed without English or French. If the ER is able to provide a reasonable explanation [REDACTED] that can be accepted. If the ER is unable to provide a reasonable explanation, English or French should be checked off in FWS and on decision letter.

## Labour Market Factors

- *How should officers assess the labour market factors?*

1. Neutral or positive LMIA: HRSDC/Service Canada will assess the LMIA application for a neutral or a positive effect on the Canadian labour market.
2. Assessment emphasis: For the purposes of this assessment, more emphasis should be placed on labour market factors such as job retention and job creation.

## Considerations

### Job Creation and Job Retention

Specific details regarding which jobs will be created and retained, along with their timeframes, can be recorded to support this factor (i.e.: list of positions that will be created/retained). For example: ER expects retention of 2 Canadian engineers and creation of 3 construction supervisor positions). Recording these details will provide a benchmark and context for future assessment discussions with the ER and aid the officers in determining whether this LMF has been or is likely to be met.

### Duration of Employment

The officer can consider amending the duration (eg. 1 year or less) [REDACTED]

## File Documentation on CIC note **Updated**

When confirming an LMIA for an owner-operator, officers should add the following CIC Note:

Based on documentation provided demonstrating the Foreign National has or is working towards establishing a business, it has been identified that the FN listed on this LMIA is an owner-operator of the business. ESDC/Service Canada has issued a confirmation with neutral impact on the labour market based on the factors prescribed by Section 203 of IRPR. However, please consider this a limited assessment of the labour market in CIC's deliberations for issuing a Work Permit.

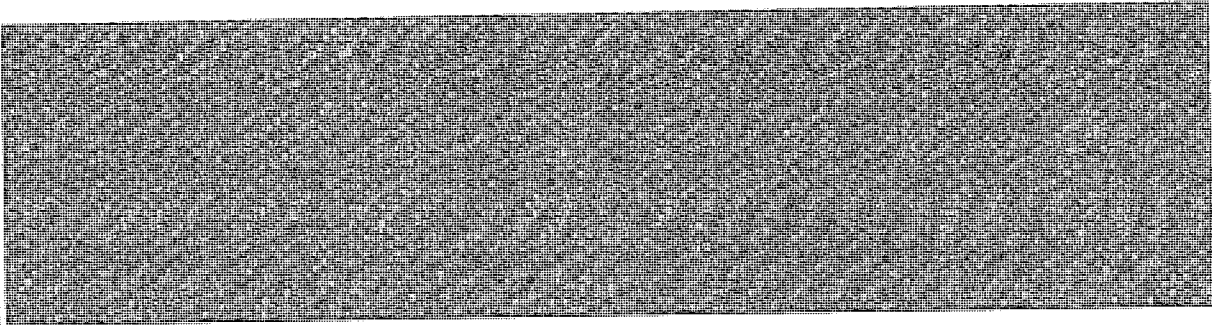
## FWS

To better track the number of owner-operator applications processed by the program, under [REDACTED] screen, please ensure that the file location is changed to owner-

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operator.

When issuing a confirmation for Owner-Operator LMIAs, under [REDACTED] please ensure that Direct job creation and/or Retention of current employees are checked off (if applicable).



Additional Document



Categories: BE Updates - TFW in WT | TFW Program - WT Region Reference Pages | All Program  
Officer Topics - TFW in WT