



Immigration, Refugees
and Citizenship Canada

Immigration, Réfugiés
et Citoyenneté Canada

Deputy Minister

Sous-ministre

Ottawa K1A 1L1

F-1344679

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MEMORANDUM TO THE MINISTER

NEW MINISTERIAL INSTRUCTIONS TO PROHIBIT WORK AND STUDY PERMIT APPLICATIONS AT PORTS OF ENTRY ACROSS CANADA

FOR DECISION

SUMMARY

- The purpose of this follow-up memorandum is to seek your approval of the approach to prohibiting the processing of work and study permit applications at ports of entry (PoE) across Canada to reduce flagpoling.

On December 10, 2024, you directed that MIs be developed (memorandum F-1343061) that would prohibit the processing of certain applications for work and study permits made at PoEs by existing work and study permit holders, as well as those who seeking to re-enter Canada after a visit to the United States or St. Pierre and Miquelon before the end of their authorized stay and look to change their previous temporary resident status from visitor to worker.

- At the time of your initial direction, you requested the inclusion of those seeking at PoE a Temporary Resident Permit (TRP), Visitor Record (VR), and Confirmation of Permanent Resident (COPR). These have been discussed with your office and will be excluded from the MIs, for the following reasons:
 - COPR: An in-Canada temporary resident approved for permanent residency can receive the COPR at a PoE, pursuant to the regulations. Further, this transaction is not considered an “application” which could be restricted by the MIs and would require a regulatory change.
 - TRP: The Canada Border Services Agency (CBSA) is strongly of the view that the TRP is a necessary tool for officers to address inadmissibility, specifically on humanitarian and compassionate grounds.
 - VR: VRs cannot be included in the MIs because they are an administrative document that is not prescribed in the legislative or regulatory framework. CBSA is also of the view that this is a critical tool to limit stay and to specify conditions on visitors, while also helping, for example, families to enrol children in school, and for some workers without a work permit to obtain a Social Insurance Number.
- CBSA is also pursuing the use of a separate, overlapping authority (R26.1) to limit certain immigration services at ports of entry that bar processing the same work and study permit applications – this would effectively mirror outcomes of the attached MIs. These are expected to be deployed on December 23 or 24, 2024.

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- This memorandum seeks your decision on whether ending flagpoling should be prohibited via your authority (Ministerial Instructions) or the CBSA's authorities as per above. Should you choose MIs, they would come into effect upon a date chosen by you in January, and will be sent for publishing in the *Canada Gazette*, Part 1.

BACKGROUND:

- The proposed MIs are intended to significantly reduce certain immigration services at the border, directing individuals to apply through in-Canada Immigration, Refugees and Citizenship Canada (IRCC) service channels instead. This approach targets flagpoling specifically, which has placed strain on border resources, diverting Canadian and American officers from critical enforcement activities and contributing to longer wait times for cross-border travellers.
- Certain groups will be exempt from this measure and will still be eligible to flagpole. This includes United States (U.S.) citizens and U.S. lawful permanent residents (R190) and some individuals covered under Free Trade Agreements (R204). Exemptions will also apply in cases where an individual has a previously-scheduled appointment with CBSA at a PoE, and for cross-border truck drivers. These exemptions have been worked through with CBSA officials.
- This measure is intended to complement broader measures by CBSA and will be included in the Border Action Plan, which is being led by Public Safety Canada. Once approved, the Department will update existing Program Delivery Instructions and external webpages, and develop new guidance for IRCC and CBSA officers, to align with the MIs and corresponding processes.

CONSIDERATIONS:

- Eliminating the ability for certain foreign nationals to apply for work or study permits at PoEs will require them to apply directly to IRCC. Diverting these applications to in-Canada channels may strain resources and disrupt the processing of other applications and priorities. Operational options are currently being developed.
- Although clients will be subject to longer processing times, existing work and study permit holders benefit from maintained status and authority to work or study while their application is being processed. Some study permit holders also benefit from authority to study while their study permit application is being processed. This will, however, require that this cohort remain in Canada pending a decision on their application. Client-facing messaging will reinforce the need to plan ahead, while also reminding clients that they can continue to work in Canada pending a decision.
- CBSA is pursuing the use of a separate, overlapping authority (R26.1) to also limit certain immigration services at ports of entry that bar processing the same work and study permit applications. CBSA is concerned that while the MIs are being implemented, and given increased focus on border integrity measures, this could cause increased pressures at PoE.

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Discussions have been held by officials on the potential for duplication of efforts and the confusion this may cause for clients, and work has been undertaken to ensure both instruments include the same cohorts for prohibition. Given this completed work, ultimately either of the measures could achieve the same objective and this is the key decision point.

LEGAL CONSIDERATIONS

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RESOURCE IMPLICATIONS:

- Applications diverted from PoEs will need to be absorbed by IRCC processing offices, which may strain resources and displace the processing of other applications and priorities. Mitigation options, such as place-based hubs allowing for document printing and pick-up, are being developed as well as a corresponding funding request to ensure the effort is properly supported.

DIGITAL CONSIDERATIONS:

- Given that these changes are being implemented via MIs that prohibit the processing of certain applications at the border, Global Case Management System changes should not be required in order to facilitate the updates. However, information technology equipment set up will be needed, as well as biometrics kits.

COMMUNICATIONS IMPLICATIONS:

- As part of a broader, Public Safety-led announcement on December 17, 2024, you signaled the intention to clamp down on flagpoling. In the coming days, we anticipate that CBSA will issue a news release to announce restrictions on flagpoling under their own regulatory authorities intended to align with the MIs that IRCC will implement.

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- As these MIs take effect, IRCC's website would be updated to reflect the restrictions on who may apply at a port of entry. In this case, the MIs would follow after CBSA had already imposed restrictions on flagpoling activities, so a more high-profile approach is not recommended.
- Responsive messaging will continue to highlight how restricting flagpoling is part of our broader migration management strategy and the government's approach to border security. This messaging also highlights the challenges with flagpoling and emphasizes the benefits of ending this practice.

RECOMMENDATION:

- We recommend that you signal your direction by selecting the desired option below.

NEXT STEP:

- Depending on your direction, officials will work with the CBSA to either seek your approval on MIs on a date to be determined in January, or work with CBSA to support them in using their authorities to prohibit flagpoling. Should your authorities be used, MIs will come into force upon your signature on the date you choose in January, and the Department will submit them to the *Canada Gazette*, Part 1 for publication.

Scott Harris
Associate Deputy Minister

Dr. Harpreet S. Kochhar
Deputy Minister

Prohibit flagpoling using your authorities, with Ministerial Instructions to come into effect at a date chosen by you in January (in consultation with CBSA)

☐ I concur

☐ I do not concur

Support the Minister of Public Safety in prohibiting flagpoling via CBSA authorities, to be implemented by a date chosen by the Minister of PS (in consultation with IRCC)

☐ I concur

☐ I do not concur

The Hon. Marc Miller, P.C., M.P.
Minister of Immigration, Refugees and Citizenship

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Annex: Ministerial Instructions, English and French

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

IMMIGRATION AND REFUGEE PROTECTION ACT

Ministerial Instructions regarding the processing of certain work and study permit applications at ports of entry

These Instructions are published in the *Canada Gazette*, in accordance with subsection 87.3(6) of the *Immigration and Refugee Protection Act* (the Act).

These Instructions are given, pursuant to section 87.3 of the Act by the Minister of Citizenship and Immigration as, in the opinion of the Minister, these Instructions will best support the attainment of the immigration goals established by the Government of Canada.

These Instructions are consistent with the objectives of the Act, as laid out in section 3, and are compliant with the *Charter of Rights and Freedoms*.

Instructions are directed to officers who are charged with handling and/or reviewing certain applications for work permits and study permits.

Applications That Will Not Be Accepted for Processing

Applications for work permits under sections 200 or 201, or applications for study permits made under sections 216 or 217, of the *Immigration and Refugee Protection Regulations* (Regulations) will not be accepted into processing, if the application is submitted :

- a. on entry to Canada per section 198 or 214 of the Regulations;
- b. by an applicant who:
 - i. currently holds a valid work or study permit;
 - ii. has a pending work permit renewal application under section 201 of the Regulations or study permit application under section 217 of the Regulations; or
 - iii. is seeking to re-enter after a visit to the United States or St. Pierre and Miquelon before the end of the period initially authorized for their stay or any extensions to it. and are seeking to change their previous temporary resident status from visitor to worker; and
 - iv. ~~has entered Canada as a visitor in the six months prior to submitting their application;~~
and
- c. the applicant is not a citizen or permanent resident of the United States of America;

Exemptions

The following work permit applications from the following applicants will still be accepted for processing at a port of entry:

- **Professionals and Technicians** seeking to perform work pursuant to a **Free Trade Agreements (FTAs)** as a :
 - i. Professional pursuant to the Agreement between the United States of America, the United Mexican States and Canada (GCMS administrative code T36);

- ii. Professional pursuant to the Canada-Chile Free Trade Agreement (GCMS administrative code F22);
 - iii. Contractual service suppliers or independent professionals pursuant to Canada-Korea Free Trade Agreement (GCMS administrative code F32);
 - iv. Professional pursuant to the Canada-Panama Free Trade Agreement (GCMS administrative code F42);
 - v. Professional or technician pursuant to the Canada-Colombia Free Trade Agreement (GCMS administrative code F12);
 - vi. Professional or technician seeking pursuant to the Canada-Peru Free Trade Agreement (GCMS administrative code F52).
- **Spouses or Common-Law Partners:**
 - vii. Spouse or common-law partner of an applicant described under paragraphs (iii), (iv), or (v) above.
 - **Truck Drivers:**
 - viii. International truck driver who is required to depart Canada for the purpose of their employment and prior to their departure from Canada held
 - a. A valid work permit; or
 - b. maintained status as a result of a pending application to extend their temporary resident status in Canada and was authorized to work under the authority of paragraph 186(u) of the Regulations.
- Note:** For greater clarity, this exemption does not apply to truck drivers operating solely within Canada.
- **Applicants with Pre-Scheduled CBSA Appointments:**
 - ix. Applicants who had a pre-scheduled appointment with CBSA for the submission of their work or study permit application prior to the publication of these Instructions.

Disposition of applications

Where applications are not processed pursuant to these instructions, the applicant will be notified of the refusal to process, and the associated processing fee will be returned.

Coming into effect

These Instructions take effect upon signature.

The Hon. Marc Miller, P.C., M.P.

Minister of Citizenship and Immigration

Dated on January X (TBC), 2024

MINISTÈRE DE LA CITOYENNETÉ ET DE L'IMMIGRATION

LOI SUR L'IMMIGRATION ET LA PROTECTION DES RÉFUGIÉS

Instructions ministérielles concernant le traitement de certaines demandes de permis de travail et de permis d'études aux points d'entrée

Les présentes instructions sont publiées dans la *Gazette du Canada* conformément au paragraphe 87.3(6) de la *Loi sur l'immigration et la protection des réfugiés* (la Loi).

Les présentes instructions sont données au titre de l'article 87.3 de la Loi par le ministre de la Citoyenneté et de l'Immigration, qui estime qu'elles favoriseront l'atteinte des objectifs en matière d'immigration établis par le gouvernement du Canada.

Les présentes instructions sont conformes aux objectifs énoncés à l'article 3 de la Loi, de même qu'à la *Charte canadienne des droits et libertés*.

Les présentes instructions s'adressent aux agents chargés de traiter ou d'examiner certaines demandes de permis de travail et de permis d'études.

Demandes qui ne seront pas acceptées aux fins de traitement

Les demandes de permis de travail au titre de l'article 200 ou 201 et les demandes de permis d'études au titre de l'article 216 ou 217 du *Règlement sur l'immigration et la protection des réfugiés* (le Règlement) ne seront pas acceptées aux fins de traitement si elles sont présentées :

- a. à l'entrée au Canada, au titre de l'article 198 ou 214 du Règlement;
- b. par un demandeur qui :
 - i. est titulaire d'un permis de travail ou d'un permis d'études valide;
 - ii. a une demande de renouvellement de permis de travail au titre de l'article 201 du Règlement ou une demande de renouvellement de permis d'études au titre de l'article 217 du Règlement en attente; ou
 - iii. ~~est entré au Canada à titre de visiteur dans les six mois précédant la présentation de sa~~
~~demande;~~ et
- c. par un demandeur qui n'est pas un citoyen ou un résident permanent des États-Unis d'Amérique.

Dispenses

Les demandes de permis de travail suivantes présentées par les demandeurs suivants seront tout de même acceptées aux fins de traitement aux points d'entrée :

- **Les professionnels et les techniciens** qui souhaitent travailler dans le cadre d'un **accord de libre-échange (ALE)** à titre :
 - i. de professionnels dans le cadre de l'Accord entre les États-Unis d'Amérique, les États-Unis mexicains et le Canada (code administratif T36 dans le Système mondial de gestion des cas [SMGC]);
 - ii. de professionnels dans le cadre de l'Accord de libre-échange Canada-Chili (code administratif F22 dans le SMGC);
 - iii. de fournisseurs de services contractuels ou de professionnels indépendants dans le cadre de l'Accord de libre-échange Canada-Corée (code administratif F32 dans le SMGC);

- iv. de professionnels dans le cadre de l'Accord de libre-échange Canada-Chili (code administratif F42 dans le SMGC);
 - v. de professionnels ou de techniciens dans le cadre de l'Accord de libre-échange Canada-Colombie (code administratif F12 dans le SMGC);
 - vi. de professionnels ou de techniciens dans le cadre de l'Accord de libre-échange Canada-Pérou (code administratif F52 dans le SMGC).
- **Les époux et conjoints de fait :**
 - vii. les époux ou conjoints de fait de demandeurs visés aux points (iii), (iv) ou (v) ci-dessus.
 - **Les camionneurs :**
 - viii. les camionneurs qui doivent quitter le Canada pour les besoins de leur emploi et qui, avant leur départ du Canada, avaient :
 - a. un permis de travail valide; ou
 - b. un statut conservé en raison d'une demande en attente pour prolonger leur statut de résident temporaire au Canada, et l'autorisation de travailler en vertu de l'alinéa 186u) du Règlement.
- Remarque :** Par souci de clarté, cette dispense ne s'applique pas aux camionneurs qui exercent leurs activités uniquement au Canada.
- **Les demandeurs ayant déjà un rendez-vous prévu avec l'Agence des services frontaliers du Canada (ASFC) :**
 - ix. les demandeurs ayant un rendez-vous avec l'ASFC pour présenter leur demande de permis de travail ou de permis d'études qui a été fixé avant la publication des présentes instructions.

Rejet des demandes

Dans les cas où une demande n'est pas traitée au titre des présentes instructions, le demandeur sera avisé du refus de traitement, et les frais liés au traitement de la demande lui seront remboursés.

Entrée en vigueur

Les présentes instructions entrent en vigueur au moment de la signature.

L'honorable Marc Miller, C.P., député
Ministre de la Citoyenneté et de l'Immigration
Le x janvier (TBC) 2024