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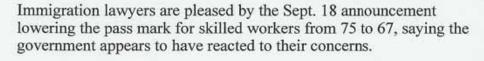
Headline Article

Immigration minister eases entry criteria Lawyers hope ministry has capability to deal with backlog

By David Gambrill

Citizenship and Immigration Canada is changing its criteria to make it easier to attract skilled workers to Canada. It will also scrap the retroactive application of the new Immigration and Refugee Protection Act (IRPA) to more than 100,000 skilled workers who applied to come to Canada before Jan. 1, 2002.

The retroactive application of the IRPA and its high pass marks for skilled workers represented thorns in the side of immigration lawyers for more than a year. Many say the IRPA led to a substantial decline in skilled worker applications.



"The positive is, we've opened up our doors to the people to whom we were supposed to open our doors - skilled individuals who will make a difference in Canada," said immigration lawyer David Garson of Guberman Garson in Toronto.



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At the same time, Garson and others wonder whether the government will comfinancial and/or administrative resources to clear up the problem of backlogged applications. Such backlogs led the government to introduce inflated pass mark retroactivity in the first place, immigration lawyers say.

"The question is that by lowering the pass mark, obviously the doors of the skil program for immigration purposes are opened a little bit wider than before," sai immigration lawyer Sergio Karas of Karas & Associates. "However, neither the department nor the minister are in any position to commit the necessary resource with the increased number of applications.

"So how meaningful is it to encourage people to file an application and then may wait for three or four years? That doesn't make any sense to me."

The government implemented the IRPA on June 28, 2002. The legislation creat points system to be applied for assessing skilled workers applying to Canada.

Under the new system, skilled workers needed a pass mark of 75 out of a possil points - based on criteria including education, experience, language proficiency arranged employment, and adaptability - in order to be considered for entry into Under the old system, skilled workers needed 70 out of a possible 110 points.

Immigration lawyers said the number of skilled worker applications nose-dived IRPA. Some talked about getting out of the business altogether, saying the governew point system was unfair to skilled worker applicants.

Denis Coderre, the minister of Citizenship and Immigration Canada (CIC), said government changed the pass mark to 67 out of 100 after listening to the viewp various stakeholders. "I said when the IRPA was initially implemented that we closely monitor the pass mark and adjust it to better match our needs," Coderre announced. "This is what we are now doing."

The government also announced it would not retroactively apply the new IRPA grid to about 100,000 skilled workers who applied to come into Canada before 2002. The announcement followed a Federal Court of Canada decision in Febru that called on the government to process pre-Jan. 1, 2002 applications accordin pre-dating the IRPA.

In June, a federal court judge imposed an injunction on CIC, preventing the der from finally refusing any application filed before Jan. 1, 2002.

"In terms of retroactivity, the litigation that was going on I think forced their habrought them to this position," said Toronto immigration lawyer Benjamin Krathankful that someone was taking on that litigation.

"I think, frankly, besides any technical legal arguments, it was the fair thing [fo do. People were caught in a system and it suddenly changed on them. It was the that I recall in immigration practice that they had used retroactivity that way."

Janet Bomza of Bomza & Associates is among several immigration lawyers where lingering threat of retroactivity.

"I imagine there is a bit of mistrust out there . . . because although they have reapass mark to 67, Parliament still legislated retroactivity and it's still part of the I scheme," said Bomza. "What that means is that at any point, the next minister c in and increase the pass mark if they so choose.

"Maybe some lawyers are approaching [Coderre's announcement] with a little t trepidation, given the uncertainty that is now part of our new law."

Initially, CIC department officials applied retroactivity - and the new high pass clear up a backlog of skilled worker applications. Immigra-tion lawyers are still about the backlog situation; they wonder whether making it easier for skilled w apply will simply make the existing backlog situation worse.

"The consulates are still grappling with massive backlogs," said Garson. "So no people will qualify, the CIC's [application] numbers will go up, and they'll have

again. The waiting period will increase and the same amount of people, more of still come [to Canada], because that's the only amount [the CIC] can process even So, whoo hoo!

"Unless they put more funding into the system - and I don't know where they at get the money to do that - I'm not sure where they are going to find the money t the people that they've lowered the points to bring in."

All the same, many lawyers report receiving phone calls from potential clients of Coderre's announcement. Also, lawyers are trying to contact past clients who turned away under the IRPA points grid but who may qualify under the new pa All in all, it's led to a yo-yo kind of practice for immigration lawyers.

"I think [they] must make sure they've got pretty solid clients' agreements prepare that they address the potential changes in pass marks," said Bomza of the uncer "You have to be much more cautious about how you represent yourself and the your clients."

Karas said the government should exercise the same amount of caution when re the system to potential applicants.

"The government should have a policy of honesty in advertising," he said. "The just tell the people: 'I'm sorry [about the delays], but maybe there is a way that 1 be admitted on a temporary permit while their final visa is being processed."

While the bar is generally happy about the anticipated increase in business, son concern that any impending increase in business for immigration lawyers might a parallel increase in business for unlicensed immigration consultants.

"Let's not forget [the high pass mark of 75] made it much more difficult for uns consultants to prey on people," said Garson. "Now, with lowering the points to extent, you're going to have a lot of these consultants coming out of the woodw making all sorts of outlandish promises, taking people's money, and not represe properly."