

Top Reasons for Refusal of Express Entry Applications

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When the Express Entry, Immigration Refugee and Citizenship Canada's ("IRCC") online application management system for permanent residency was launched in 2015, it was with the aim to help IRCC, then Citizenship and Immigration Canada, to overcome the multi-year backlog of applications for permanent residence in its economic immigration programs and provide a more efficient and predictable avenue for immigrants with the best prospects of successful integration in Canada.¹

According to s.12(2) of the *Immigration and Refugee Protection Act* ("IRPA"), "a foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada."² To determine economic ability Canada has been using a point system to assess potential immigrants since the 1960's. The inception of Express Entry shifted the assessment to an Expression of Interest system similar to those used in New Zealand and Australia.³ Thus, the application for Permanent Residence became a two-step process in which potential applicants first submit an online profile, then, once they are invited by IRCC, they apply for permanent residency.

To be eligible, potential economic immigrants must meet the minimum criteria for one of four programs: Federal Skilled Workers ("FSW"), Federal Skilled Trades ("FST"), the Canadian Experience Class ("CEC"), or some portions of the Provincial Nominee Program ("PNP").⁴

In accordance with the *Immigration and Refugee Protection Regulations* ("IRPR"), candidates applying through the FSW class must have a minimum of one year of work experience within the last ten years, which

falls under Skill Type 0, Skill Level A or B of the *National Occupational Classification* ("NOC") matrix.⁵ They must also provide an approved language assessment, meeting the appropriate language threshold for their occupation and either a Canadian educational credential or an equivalent foreign credential assessed by a designated institution.⁶

Eligible candidates in the FST Class must have a minimum of two out of the last five years of full-time work experience within specified trade occupations falling in the Skill Type B of the NOC.⁷ They also need to have a federal or provincial certificate of qualification for their position, or alternatively have a valid job offer in Canada. The requirement for language assessment remains the same albeit the threshold for language proficiency is lower than in the other two federal classes.⁸

The CEC class is open to candidates who have Canadian work experience of at least one year within the "three years before the date on which their application for permanent residence is made."⁹ Like in the FSW class, this work experience must be in Skill Type 0, A or B and candidates must prove English or French proficiency through an approved assessment.¹⁰

The PNP allows the provinces and territories to select desirable candidates from the Express Entry pool based on their own economic priorities and resulting criteria. The Express Entry candidates with an eligible profile are either sent notifications of interest by the provinces, or they apply directly to the province and once they are approved, they apply to Express Entry with a nomination from that province.¹¹ Even with a nomination, the candidates must fulfill the minimum criteria of one of the classes described above.¹²

¹ Government of Canada Archives, *News Release Express Entry will contribute to Canada's economic growth and international competitiveness* (Ottawa: 1 January 2015)

<https://www.canada.ca/en/news/archive/2015/01/recruiting-demand-skilled-immigrants-canada.html>

² S.C. 2001 c 27 [IRPA].

³ Mario D. Bellissimo, "Canada's New Economic Migration Model: Whose Interests Are Being Expressed?" (2014) 23 Imm. L.R. (4th) 175.

⁴ Government of Canada, *Eligibility for Express Entry programs* <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility.html>

⁵ SOR/2002-227, s 75(2) [IRPR].

⁶ *Ibid.*

⁷ IRPR *supra* note 5, s 87.2(1).

⁸ *Ibid.*

⁹ IRPR *supra* note 5, s 87.1(2)(a).

¹⁰ *Ibid* 2a-d.

¹¹ Government of Canada, *How the Provincial Nominee Program (PNP) works* <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/provincial-nominees/works.html>

¹² *Ibid.*

Once the candidates have met the minimum criteria and are in the Express Entry pool, they are ranked based on the points they receive from the Comprehensive Ranking System (“CRS”). The maximum attainable score is 1200, made up of 600 core points allocated for skills, work experience, age and education, and 600 additional points for factors such as Canadian education, a valid job offer, provincial nomination, siblings living in Canada and strong French language skills.¹³ During rounds of invitations that take place every few weeks, the Minister of Immigration releases instructions stating the number of invitations that the IRCC issues during that round and the program from which the candidates are being invited.¹⁴ The highest ranked candidates receive an invitation to apply. The CRS score required to be invited changes in each draw as it is a function of the number of candidates invited and the quality of the applicant pool.

When candidates are invited, they have 60 days to complete their application for permanent residence.¹⁵ In their application they must prove to IRCC that they possess the qualifications that they claimed to have at the time of profile creation, as well as meeting the eligibility requirements for the economic program and the criteria for admissibility to Canada.¹⁶ Section 11(1) of the IRPA states that an officer must be “satisfied that the foreign national is not inadmissible and meets the requirements of the Act.”¹⁷ If an officer is not satisfied that a candidate possesses the qualifications that they had claimed in their online profile or that they are admissible to Canada, their application will be refused.

Reasons for Refusal

The onus is on the candidates to ensure that all the points calculated for them by the CRS remains the same or exceeds as of the date of submission of their application for Permanent Residence. Should they lose enough points to fall below the lowest ranked applicant invited for that round of invitations, they will fail to meet the requirements of the IRPA, and their application will be refused. Their application may also be refused if their

documents indicate that they are inadmissible to Canada for medical or criminal reasons. The top reasons for officers to refuse applications are incomplete documents, documents that are not in accordance with the instructions provided by IRCC, or documents that have expired.

Incomplete Applications

The 60-day deadline to submit an application helps to ensure that IRCC can meet its standard of finalizing 80% of its economic applications within six months; however, it can often be a catalyst for refusal as some candidates struggle to provide a complete application package within this time frame.¹⁸ In accordance with their personalized checklist on their Express Entry profile, applicants must provide proof of a medical exam, reference letters, offers of employment, diplomas, police certificates, as well as proof of relationship to Canadian siblings.

The invitation generated by the electronic Express Entry system clearly notes the deadline to complete the application, the lack of possibility to obtain an extension, and the importance of keeping the same score.¹⁹ In respect of the documents required of the applicant, the case law is clear that there is no obligation for IRCC officers “to provide an applicant with an opportunity to address concerns of the officer when the supporting documents are incomplete, unclear or insufficient to satisfy the officer that the applicant meets all the requirements”.²⁰ Thus, if an applicant does not submit the documents specified by IRCC, an officer will refuse the application.

Inadvertent omission of required documents is not forgiven in the Express Entry system and second chances are not granted. For example, in *Joseph v Canada (Citizenship and Immigration)*²¹ the applicant claimed that she accidentally failed to include a police certificate from a country where she had stayed longer than six months. This claim was not accepted and the court held that the onus was on the applicant to submit a

¹³Government of Canada, *How we rank your Express Entry profile* <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility/criteria-comprehensive-ranking-system.html>

¹⁴ Government of Canada, *Rounds of Invitations* <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/submit-profile/rounds-invitations.html>

¹⁵ Government of Canada, *Respond to your invitation to apply* [https://www.canada.ca/en/immigration-refugees-](https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/submit-profile/respond-invitation.html)

[citizenship/services/immigrate-canada/express-entry/submit-profile/respond-invitation.html](https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/submit-profile/respond-invitation.html)

¹⁶ IRPA *supra* note 2 s 11.2(1).

¹⁷ IRPR *supra* note 5, s 11(1).

¹⁸ Immigration Refugees and Citizenship Canada, *Express Entry Year-End Report 2019* (Report 2019) 26.

¹⁹ Government of Canada Form IMM5791 (June 2018).

²⁰ *Singh v Canada (Minister of Citizenship and Immigration)*, 2017 FC 266 at para 14.

²¹ 2018 FC 268

complete application as per s.11(1) and s. 16 (1) of the IRPA.²²

Insufficient Documents

If the application is determined to be incomplete, the processing stops and the applicant receives a refund of the application fees; if, however, the submitted documents are insufficient, then not only will the application most likely be refused, but the application fees will not be refunded. For documents to be considered satisfactory, they must meet the exact requirements stated on the Express Entry checklist.

Insufficient proof of funds was the apparent reason why the officer refused the application in *Gugliotti v. Canada (Minister of Citizenship and Immigration)*²³ but the real reason was that the applicant had provided insufficient documentation confirming available settlement funds. While the applicant did provide proof of funds, it was not an official letter from her bank as required by IRCC, but instead, they were printouts downloaded from her online bank account. The refusal was upheld by the court, in recognition of IRCC's authority to determine which documents are acceptable.²⁴

The applicant in *Singh v Canada (Minister of Citizenship and Immigration)* also failed to follow IRCC documentary requirements. He provided a Labour Market Impact Assessment ("LMIA") instead of a valid job offer letter as requested in the online instructions.²⁵ "While an LMIA approval letter from Employment and Social Development Canada is one of the requirements for a work permit or permanent resident visa, it does not demonstrate that [an] Applicant [has] a forward-looking offer of employment for continuous, full-time work" as required by the program.²⁶ The court sided with the officer who had deducted the CRS points for a valid job offer in Canada, leaving the applicant with a score that was too low for that round of invitations.

It can be especially challenging for candidates to ensure that foreign documents meet the requirements of IRCC. In *Ekama v. Canada (Citizenship and Immigration)* the foreign skilled worker's reference letters did not list the duties she had performed, therefore, the officer concluded that she did not have the qualifications

necessary for the NOC code that she was claiming.²⁷ Even though the court noted that the candidate most likely met the eligibility criteria, it held that the officer assessing her application was correct in rejecting the work letters for not meeting the program requirements.

Insufficient Job Descriptions

Documents can be insufficient if they do not demonstrate an applicant's eligibility as an economic immigrant. Officers pay close attention to reference letters. Those must demonstrate that the applicants performed the actions described in the lead statement of occupational descriptions in the NOC during their period of employment, as well as a substantial number of the main duties ascribed to the occupation.²⁸

As noted above, to qualify for any of the federal economic programs, candidates must have experience in occupations described in categories O, A or B of the NOC. If their reference letters cannot confirm this, then the candidates do not meet program requirements.

In *Saatchi v. Canada (Citizenship and Immigration)*²⁹ the applicant applied through the CEC with work experience as a Technical Sales Specialist, a skill level B occupation, however, his reference letters indicated that he had worked as a retail sales person, a skill level C occupation. The court held that "officers must examine whether the 'pith and substance' of an applicant's experience are in line with the relevant NOC." ³⁰ Thus, officers look beyond job titles to assess whether the candidates have truly performed the job that they claim in their applications; if the reference letter's description of the occupation do not match the NOC, the officers will not be satisfied that the applicants meet the requirements of the program.

Expired Documents

IRCC also requires that the documents supporting an application for permanent residence have not expired. Most documents requested by the Express Entry system have a limited validity. For instance, police certificates from the country where a candidate lived cannot be older than six months, and medical examinations cannot be older than twelve months.³¹ Language test results are valid for two years, and the credential equivalency

²² *Ibid* at para 8.

²³ 2017 FC 71.

²⁴ *Ibid* at para 37, 39.

²⁵ *Singh supra* note 20.

²⁶ *Ibid* at para 25, 27.

²⁷ 2020 FC 105.

²⁸ IRPR *supra* note 5, s 75(b)(c).

²⁹ 2018 FC 1037.

³⁰ *Ibid* at para 26.

³¹ Government of Canada, *Medical exam for permanent resident applicants* <https://www.canada.ca/en/immigration-refugees->

assessment necessary to prove a candidate's education is valid for five years.³² Provincial nomination certificates have expiry dates, as do work permits and offers of employment. To ensure that these documents are not rejected, it is imperative that applicants submit their applications for permanent residence before their expiry.

In *Agbai v Canada (Citizenship and Immigration)* the applicant submitted her application a month after her LMIA had expired. Without a valid LMIA the officer assessing her application found that she did not possess a valid offer of employment and deducted 200 points from her score, leaving her rank below the CRS cut off for that round of invitations. Considering that the applicant's invitation to apply clearly stated her responsibility to maintain the minimum points, the court found that the candidate was sufficiently informed of the requirement to submit her application before the LMIA expiry.³³ There is little leeway given to applicants who submit expired documents and there is almost no recourse for applicants who do not submit their application in accordance with IRCC's instructions.

Judicial Review

Generally, the caselaw shows that the Express Entry system eliminated some of the avenues for judicial review provided by section 72 (1) of the IRPA, which stipulates that decisions, determinations or orders made under IRPA are reviewable.³⁴ The initial eligibility calculations have been transferred from the realm of human discretion to a fully electronic system guided by ministerial instructions.³⁵ The Express Entry system has eliminated the option for candidates to protest a lack of opportunity to apply.

The decisions that can be reviewed are those of officers assessing the applications for permanent residence. Nevertheless, the jurisprudence demonstrates that this is a difficult undertaking for applicants. In the landmark case *Canada (Minister of Citizenship and Immigration) v. Vavilov*, the Supreme Court of Canada established that "reasonableness is the presumptive standard of review" in cases questioning procedural fairness; this includes questions regarding IRCC officer's decisions.³⁶ Deference is also given to the officer as a decision maker with expert knowledge of the

subject matter. If applicants claim that an officer's decision was unreasonable, they must establish that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" or that the decision is "untenable in light of the relevant factual and legal constraints that bear on it."³⁷

In addition, the courts have held that:

- (1) an applicant has the onus of providing enough evidence to support the application;
- (2) the degree of procedural fairness owed to an applicant is at the low end of the spectrum;
- (3) there is no obligation on an Officer to notify an applicant of deficiencies in the application or supporting documentation; and
- (4) there is no obligation on the Officer to provide the applicant with an opportunity to address any concerns of the Officer when the supporting documents are incomplete, unclear or insufficient to satisfy the Officer that the applicant meets the requirements.³⁸

Thus, when it comes to arguing that their application was not assessed fairly, applicants must be able to prove that the officer acted unreasonably in questioning the sufficiency of their documents. If the officer could reasonably reject their application for insufficient, unclear or incomplete documents, then applicants will not succeed in judicial review.

Conclusion

Express Entry has been touted as a more efficient and simpler system for foreign skilled workers to obtain permanent residency in Canada. While it may seem straightforward on its face, it is by no means an effortless process for economic applicants. The onus is on them to provide IRCC with a complete application package that includes documentation prepared in accordance with IRCC requirements. Missing, insufficient or expired documents warrant a refusal of the application, with little recourse for the applicants. It is therefore of utmost importance that applicants pay close attention to the instructions provided on their checklists

[citizenship/services/application/medical-police/medical-exams/requirements-permanent-residents.html#long](https://www.citizenship/services/application/medical-police/medical-exams/requirements-permanent-residents.html#long)

³² IRPR *supra* note 5, s 75(1)(d)(e)(iii).

³³ *Ibid* at para 33.

³⁴ IRPA *supra* note 2, s 72(1).

³⁵ Asha Kaushal "Do the Means Change the Ends? Express Entry and Economic Immigration in Canada" *Dalhousie Law Journal* 84 p114.

³⁶ 2019 SCC 65.

³⁷ *Ibid* at paras 100, 103.

³⁸ *Lazar v Canada (Minister of Citizenship and Immigration)* 2017 FC 16.

and submit all supporting documents in conformance with them.

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