

Some Immigration Issues for International Students

It is well known that international students are a significant source of income for Canadian educational institutions in particular and for the Canadian economy in general. Aside from the fact that the tuition fees paid by these international students are often double or triple the amount paid by permanent residents or Canadian citizens, they are also a source of income for dormitories/landlords, restaurants and other food suppliers, electronic gadget stores, and sellers of practically any product/service that money can buy.

It is no surprise therefore, that international students have increasingly become a target of exploitation for unscrupulous individuals and organizations. Thus, it is very important that prospective and existing international students are well-informed of the various implications of their stay in Canada.

Victimizing the Rich and the Poor

A recent high-profile kidnapping of an international student in Markham in the parking garage of his condominium building highlighted an oft-heard stereotype of international students – young children of wealthy parents who can afford not only the hefty international fees but sometimes also the expensive condo apartments and even luxury cars. Thus, they often become an easy target for the kidnap-for-ransom industry, endangering their lives in the process.

On the other end of the spectrum, foreign nationals with much less resources but who are unable to qualify for a work permit or permanent residency, are lured by the prospect of being able to work through the study permit route. Thus, many private schools have convinced prospective students from abroad to sell property or borrow from loan sharks, to afford the exorbitant fees required to obtain an acceptance letter from a Canadian educational institution. Upon arriving in Canada however, many of them find that the education they receive is either substandard or that the school itself is a not a designated learning institution that qualifies for the issuance of postgraduation work permits for its students. Worse, many end up becoming victims of human trafficking by being forced to work in low-skilled jobs for very little pay, or toil in the underground economy, thus reinforcing their vulnerability.

Limitations of a Study Permit

As the term implies, a study permit is a temporary authorization for a foreign national to pursue full time studies in Canada. Although Canada's current immigration law allows study permit holders to work on or off campus under certain conditions (e.g. part time during study periods and full time during study breaks), the primary condition is that the student should maintain full time enrolment in the educational program and learning institution specified in the study permit.

If the student chooses to work full time instead of pursuing the full time study program for which the study permit was issued, then he/she is in violation of the terms of their temporary stay in Canada and may be rendered inadmissible in the process.

Designated Learning Institution

Another important thing to consider before applying for a study permit, is to ensure that the school where the applicant will be enrolled is a designated learning institution (DLI) that is approved by a provincial or

territorial government in Canada to host international students. If the school is not a DLI, then the study permit application will not be granted. Since most schools require some form of payment (whether full or partial tuition or a deposit), there is a risk that part or all of the money paid will not be refunded if the study permit application is refused.

Moreover, not all DLIs are created equal. There are several DLIs which are only recognized for purposes of study permit issuance, but whose graduates are not eligible for postgraduation work permits. If this is the case, the study permit holder cannot legally work for any employer in Canada after graduation unless he/she obtains an employer-specific work permit or eventual permanent resident status. The latter options are often not available to those who were only able to study full time in Canada and have had no full time work experience in a high-skilled occupation (as further discussed under PGWP below).

Thus, when the study permit validity expires and no renewal application is pending, the international student loses temporary resident status and would have to leave Canada to avoid violating Canada's immigration laws.

Postgraduation Work Permit

A postgraduation work permit (PGWP) is an open work permit that will allow a student to work for any employer in any legal occupation in Canada (except those that may be specifically excluded under the terms of the work permit). This is issued to international students who have completed a full time postsecondary program (i.e. awarded a degree, diploma or certificate) for a minimum period of eight months in a DLI that is eligible for the issuance of PGWP for its students.

The international student can apply for the PGWP within 180 days from receiving confirmation of completion of the study program from the DLI. It is also important to note that the PGWP can only be issued once, even if the student completes another full time study program after the expiry of the PGWP.

One can apply for a PGWP from inside or outside of Canada. If applying from inside Canada, it is important that the applicant maintains valid temporary resident status (as a student, worker or visitor).

Although the PGWP is an open work permit which allows the holder to work in any occupation, it must be noted that the work experience that may qualify for a permanent residence application are generally occupations in the NOC O, A or B (skilled trades, professional, managerial or so-called high-skilled occupations). Hence, if the PGWP was used to work in NOC C or D (lower skilled) occupations, the work experience may not qualify the application for permanent residence under most of the current immigration categories.

** This article is meant for information purposes only and not as specific legal advice.*

*** I would like to wish my dearest sister, Cecille Santos (who is a registered immigration consultant and licensed paralegal), a very happy and blessed birthday on April 27th!*

The author is a Filipino-Canadian immigration lawyer and may be reached at deanna@santoslaw.ca or tel. no. 416-901-8497.