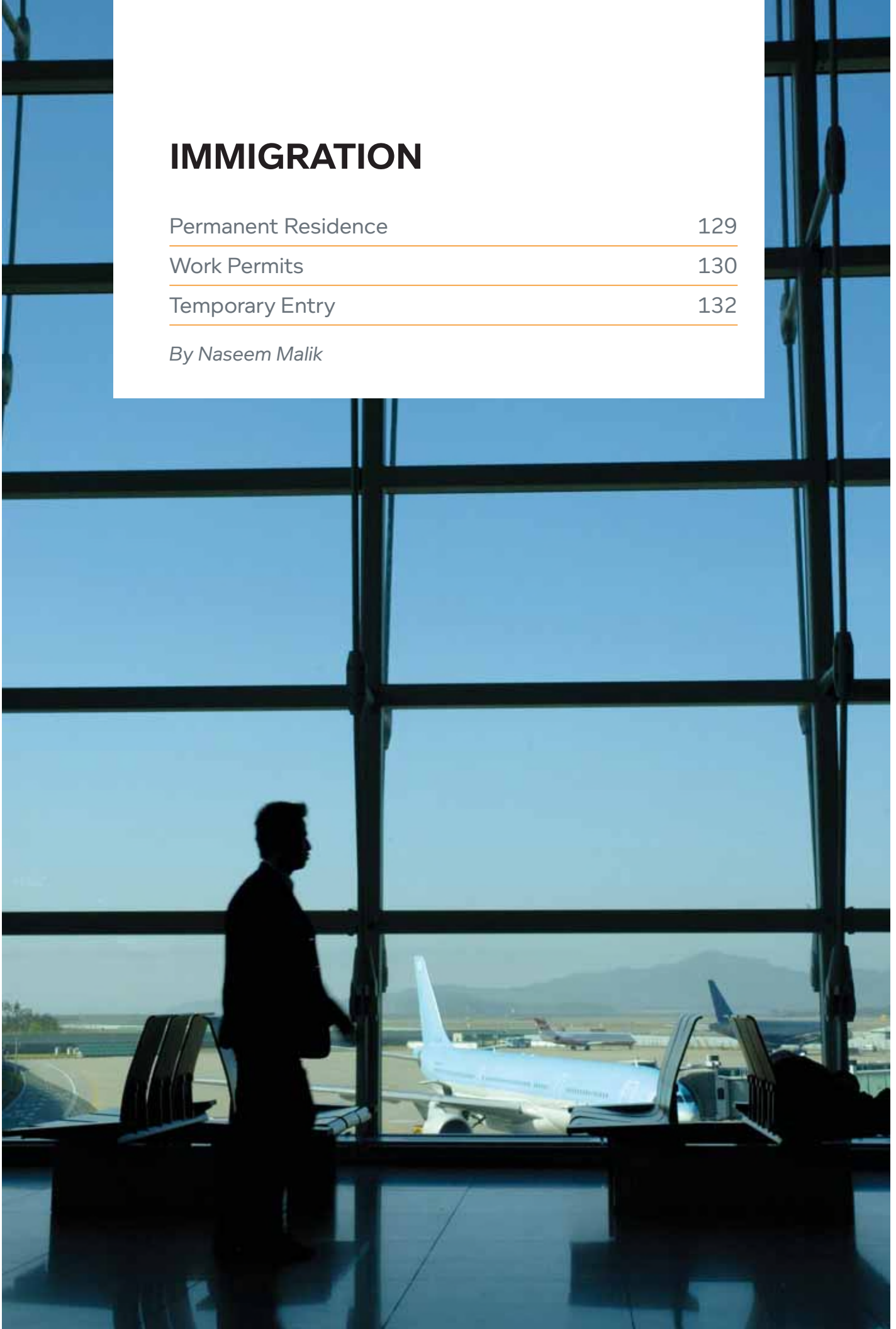


IMMIGRATION

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By Naseem Malik



IMMIGRATION

The federal government is responsible for immigration, although some provinces have entered into agreements with the federal government enabling them to assume certain policy and procedural objectives. These agreements are called Provincial Nominee Programs. The federal statute governing Canadian immigration law is the *Immigration and Refugee Protection Act (IRPA)*.

Permanent Residence

Any non-Canadian entering the country and planning to remain as a permanent resident must first apply for, and then be granted, a permanent resident visa. Starting in November 2016 the new mandatory Electronic Travel Authorization (ETA) came into effect. Foreign nationals other than American citizens and permit or visa holders must file and secure the ETA prior to travel to Canada.

Since January 2015, a system called Express Entry came into effect, which governs economic class applications for permanent residence. Under the Express Entry system, applicants must create an online profile and are scored using a set of criteria, which includes proficiency in English or French, education level, age, etc. Once the profile is created each candidate is placed into a pool and every month a select number of the top candidates are invited to apply for permanent residence in one of the various categories. The two most common categories are the Canadian Experience Class and the Federal Skilled Worker category. The various Provincial Nominee Programs also play an important role in the selection of immigrants. Provincial Nominee Programs are agreements between the federal government and some of the provinces whereby there is a delegation of authority from the federal government to the provincial government to allow a limited right to select immigrants destined to its province. Each Provincial Nominee Program has its own selection criteria.

Québec has an agreement with the federal government on immigration matters. The Québec agreement provides for a separate selection process for permanent residents, and some additional procedures for temporary entry that are administered by the government of Québec.

Work Permits

In 2015, Immigration, Refugees and Citizenship Canada introduced mandatory employer compliance guidelines for any work permit that is employer specific and belongs to a Labour Market Impact Assessment exempt category. The employer compliance filing must be done electronically in advance of the temporary foreign worker making a work permit application either through a Canadian consulate or embassy abroad or at the border/port of entry.

Generally, any business-related activity carried on in Canada on a temporary basis by a person who is neither a Canadian citizen nor a Canadian permanent resident, for which remuneration is received, or would reasonably be expected to be received, requires a work permit. There are, however, a number of work permit exempt categories that allow a foreign national, if eligible, to carry on prescribed business activities in Canada without need for a work permit. Work permit exempt categories include the NAFTA Business Visitor and the intracompany trainer.

WORK PERMIT EXEMPT CATEGORIES INCLUDE THE NAFTA BUSINESS VISITOR AND THE INTRACOMPANY TRAINER.

Under certain circumstances, multinational or other foreign companies carrying on business in Canada may transfer executive or senior managerial employees or workers with specialized knowledge to work in Canada on a temporary basis, subject to such employee or worker obtaining a work permit. Such employee or worker might be eligible for a work permit as an intra-company transfer pursuant to three separate and distinct international agreements — the *North American Free Trade Agreement* (NAFTA), the *Canada-Chile Free Trade Agreement* (CCFTA) and the *General Agreement on Trade in Services* (GATS). These three international agreements liberalized the rules respecting the temporary entry of business visitors, certain professionals and intra-company transferees who are citizens or permanent residents of the numerous countries that are GATS signatories or citizens of the United States or Mexico (in the case of NAFTA) or citizens of Chile (in the case of CCFTA).

In addition to certain prescribed work permit categories under these agreements, there are also a number of other exempt categories available



under the Regulations of the IRPA, including one for intra-company transfers.

In 2008, Immigration, Refugees and Citizenship Canada relaxed duration limits for young workers under the post-graduation work permit category, raising duration limits in some cases to three years from the typical 12 months. The post-graduation work permit was also shifted to an open work permit, which makes it non-employer-specific and allows more flexibility to young graduates to pursue employment options in the Canadian labour market.

If an employee is not eligible for any of the exempt categories, he or she can still obtain a work permit if his or her Canadian employer can first obtain a Labour Market Impact Assessment from Employment Skills Development Canada, a federal government agency. To do so, the Canadian employer must demonstrate that granting a work permit to the employee will result in the transfer of skills or technology to Canadians or will result in other types of positive benefits, such as job creation. Usually the employer must also show that there are no Canadians available to do the job.

Stricter rules for the maximum total duration of some work permits based on Labour Market Impact Assessments went into effect in April 2011, which cap the total duration at four years for some types of work. At that time, the foreign national will no longer be able to hold a lawful work permit until a subsequent four years has passed. Tougher new rules concerning penalties for employers who do not comply with immigration laws also came into effect on April 1, 2011, which can bar a company from bringing anyone into Canada to work for a mandatory two-year period should it be deemed to have breached Canadian immigration laws. The rules concerning the issuance of Labour Market Impact Assessments changed significantly in 2013. Some of the significant changes include a processing fee for each worker being requested and longer and more numerous types of advertising required in advance of a Labour Market Impact Assessment being filed to demonstrate that the Canadian labour

IN ADDITION TO CERTAIN PRESCRIBED WORK PERMIT CATEGORIES UNDER NAFTA, CCFTA AND GATS, THERE ARE ALSO A NUMBER OF OTHER EXEMPT CATEGORIES AVAILABLE UNDER THE REGULATIONS OF THE IRPA, INCLUDING ONE FOR INTRA-COMPANY TRANSFERS.



market was extensively searched prior to the hire of a foreign national.

Temporary Entry

With respect to temporary entry, nationals of certain countries may also be required to obtain a temporary resident visa (formerly, a visitor visa) to enter Canada, and may be required to undergo a medical examination before arriving for entry to Canada.

The rules and regulations governing both permanent and temporary entry to Canada are complex and ever changing. It is therefore prudent for any company wishing to establish a commercial presence in Canada to become familiar with Canadian immigration laws.

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