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Immigration and Naturalization

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

Immigration and Naturalization

EDITED BY KEVIN J. FANDL;* CONTRIBUTIONS BY MELANIE GLOVER,
SABRINA DAMAST, AND ALEXANDRIA SODINI**

I. Introduction

As this edition of the *Year in Review* goes to press, migration is rapidly becoming a more controversial issue than in recent history, with a refugee crisis some are likening to the Jewish flight from Germany during Hitler's reign or the United States internment of Japanese individuals during World War II, and a political debate in the United States and Europe, principally, in which migration serves as one of the top issues for discussion. And despite long-standing conventions, such as the 1951 Refugee Convention, or domestic laws, such as the United States Immigration and Nationality Act of 1952, basic questions about the status of migrants and refugees are bubbling to the surface of debates in town halls and news shows once again.

Our authors of this Article tackle these issues from the focal point of specific countries. Melanie Glover begins with an examination of the migration question in Spain, where the country faces an influx of migrants from parts of Africa and the Middle East as well as an exodus of Spanish citizens unable to find sustainable employment within Spain. The next section takes us to Central America where Sabrina Damast walks us briefly through an important new precedent from the United States Court of Appeals for the Fourth Circuit, in which a mother was granted asylum on the basis of her relationship to her twelve-year old son, who was targeted for gang recruitment in El Salvador. Finally, we round out this year's Article with Alexandria Sodini's thorough review of the new Canadian immigration initiatives, including the new Express Entry system, Employer Portal, and administrative penalties.

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II. Spain's Recent Immigration Trends: 2015¹

A. INTRODUCTION

Spain has seen consistent yet diverse migration patterns into and out of the country over the past decade; however, recent times have put Spain on heightened alert of what these patterns might mean for its own national security, economic outlook, and even socio-cultural transformation. Foreign nationals considering immigration to or refuge in Spain have recently come from Northern and Sub-Saharan Africa and now the Middle East. At the same time, Spanish nationals have sought economic opportunities beyond Spain's borders.² This section explores these recent migration trends and what they mean for Spain's future as part of the European Union and Schengen Territory ("Territory").

1. *Immigration*

For the past several years, foreign nationals from various countries in Northern and Sub-Saharan Africa have made the often-treacherous trek North toward Europe to flee the humanitarian crises in their countries of origin involving circumstances of poverty, civil wars, and disease.³ Spain has presented a unique geographic gateway for these foreign nationals to seek entry into Europe via Spain's nearest land and maritime ports: the Strait of Gibraltar, the Canary Islands, the Balearic Islands, and Spanish territories in North Africa including Ceuta and Melilla.⁴

Foreign nationals fleeing their native countries in Africa to escape strife and start anew in Spain often attempt to enter at Spanish ports in "cayucos" or "pateras"—small boats, and these foreign nationals arrive with more basic human needs, such as food, water, and shelter, than Spain has been able to address over the past several years.⁵ Additionally, Spanish President Mariano Rajoy recently promised that Spain would accept a certain number of Syrian refugees as well as other foreign nationals enduring conflict considering the ongoing Syrian Civil War and unrest in the Middle East.⁶ While the specific number of Syrian refugees that Spain ultimately accepts may change in the future, President Rajoy's commitment signals to Spaniards and the rest of the world the seriousness with

1. Melanie Glover (Alticor Inc., Ada, Michigan, U.S.A).

2. Eve Conant, *The World's Congested Human Migration Routes in 5 Maps*, NAT'L GEO. (Sept. 19, 2015), available at <http://news.nationalgeographic.com/2015/09/150919-data-points-refugees-migrants-maps-human-migrations-syria-world/>.

3. *España contra la inmigración ilegal (Spain against illegal immigration)*, BBC (Sept. 4, 2006), available at http://news.bbc.co.uk/1/hi/spanish/international/newsid_5314000/5314274.stm.

4. *Un centenar de inmigrantes entran en Melilla en dos saltos casi simultáneos (One hundred immigrants enter Melilla in two almost simultaneous jumps)*, EL PAÍS (July 23, 2013), available at http://politica.elpais.com/politica/2013/07/23/actualidad/1374565043_616055.html.

5. Francisco Peregil, *Así se detuvo el éxodo de migrantes en cayucos desde África occidental (An exodus of immigrants in canoes from Africa stopped)*, EL PAÍS, (Sept. 16, 2015), available at http://internacional.elpais.com/internacional/2015/09/15/actualidad/1442308752_629804.html.

6. Mariano Rajoy, *Sobre la crisis de los refugiados: "Hay que hacer un Plan Marshall como EEUU en Europa" (On the refugee crisis, "We must make a Marshall Plan in Europe and the United States")*, EL MUNDO (Sept. 10, 2015), available at <http://www.elmundo.es/espana/2015/09/10/55f12e3b22601d44428b4570.html>; Aitor Bengoa, *Niños sirios cruzan solos la frontera de Melilla (Syrian children crossing the border alone in Melilla)*, EL PAÍS (Sept. 19, 2015), available at http://politica.elpais.com/politica/2015/09/17/actualidad/1442519896_242562.html.

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which the Syrian conflict is affecting the Euro Zone as a whole. The commitment came after the promises of other European leaders to do the same as part of the European Commission's attempt in 2015 to address the influx of Syrian refugees and displaced persons seeking refuge in Europe due to neighboring conflicts.⁷

2. *Emigration*

Similarly, another phenomenon is occurring in Spain related to the emigration of Spanish nationals from the country. After recent years of high unemployment rates due to an economic crisis, Spanish nationals are leaving Spain in mass numbers to seek work elsewhere. The trend for Spanish nationals has been to remain in Europe by seeking employment in Germany.⁸ While the language barriers have dissuaded some, the more numerous economic opportunities in Germany have nonetheless encouraged many to flee in search of jobs.⁹ Other countries receiving Spanish nationals looking for work have recently included United Kingdom and France.¹⁰

Spanish nationals are not the only ones leaving Spain to seek better opportunities. Another migration trend affecting Spain's population is foreign nationals returning to their countries of origin to escape the ongoing economic crises that both Spain and greater Europe have been experiencing in the past few years.¹¹ The lack of jobs in Spain due to a high unemployment rate has motivated many foreign nationals to either return to their countries of origin or look for work elsewhere. The trend is especially prevalent among the young, who suffer from an even higher unemployment rate than the general population in Spain.¹² Thus, foreign nationals who once before had called Spain their new home have now sought to return to their native countries where jobs may in fact be more plentiful.

B. OVERARCHING LEGAL FRAMEWORK: THE SCHENGEN TREATY OF 1985 AND THE UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES

The Schengen Treaty of 1985 and the Convention implementing it in 1990 created the principle of free circulation throughout the Territory by establishing for the signatory states a "single external border where immigration checks for the Schengen area" fall under common rules.¹³ These common rules apply to visas for a limited duration,

7. Javier Ayuso, *Un éxodo de 60 millones de personas (An exodus of 60 million people)*, EL PAÍS (Sept. 12, 2015), available at http://internacional.elpais.com/internacional/2015/09/12/actualidad/1442078485_917706.html.

8. *The Job of My Life*, German Government, available at <http://www.thejobofmylife.de/en/home.html>; Patricia Jackson, *My Germany: Spanish Expatriate* (Sept. 12, 2013), available at <http://www.bbc.com/news/world-europe-23997359>.

9. Ian Mount, *For Spanish Youth, a Hard Choice to Go Abroad for Work*, FORTUNE (Aug. 1, 2014), available at <http://fortune.com/2014/08/01/spain-unemployment-germany/>.

10. *Cifras de Población a 1 de enero de 2015 Estadística de Migraciones 2014 Datos Provisionales (Population figures to January 1, 2015, Migration Statistics 2014 Provisional Data)*, SPANISH NATIONAL INSTITUTE OF STATISTICS (June 25, 2015), available at <http://www.ine.es/prensa/np917.pdf>.

11. Fiona Orúz, *Spain's Population Falls as Immigrants Flee Crisis*, REUTERS (April 22, 2013), available at <http://www.reuters.com/article/2013/04/22/us-spain-population-idUSBRE93L0J620130422>

12. *Id.*

13. Eur-Lex European Union Law Database, *The Schengen Area and Cooperation*, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:l33020>.

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requests for asylum, and border controls.¹⁴ As of 2015, the Territory includes most European Union member states (including Spain) plus Switzerland, Norway, and Iceland.¹⁵ Ireland and the United Kingdom, which are also member states of the European Union, have only adopted some of the Schengen rules and therefore exist outside of the Territory.¹⁶ While the intent of creating the Territory was to implement a simplified set of rules to address border concerns, the free movement of individuals undoubtedly influences migration trends for those belonging to the Territory—especially after an individual receives initial access to the Territory.

Spain, a supporter of the United Nations Convention Relating to the Status of Refugees (“Convention”), has also adopted the principle of non-refoulement, and therefore, has the obligation to consider protecting those foreign nationals who seek entry into Spanish territory based on a well-founded fear of returning to their countries of origin. The Convention strongly suggests that the signatories to it should not remove individuals, such as foreign nationals seeking relief in Spain, to their home countries where these individuals maintain well-founded fears of persecution.¹⁷ In an introductory note to the Convention and Protocol, the principle of non-refoulement in the asylee context means that “no reservations or derogations may be made to [the principle of non-refoulement] . . . [the principle] provides that no one shall expel or return (‘refouler’) a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.”¹⁸ Non-refoulement, then, prohibits the forcible return of a foreign national to the country of persecution.

While the principle of non-refoulement remains open to interpretation and application to those in support of the Convention, political, legal, and social pressures are on the rise and create a reality that the Euro Zone cannot ignore or address without the collaboration of all. Spain, along with the rest of its European neighbors, needs to take into account how to apply this concept of non-refoulement in the face of recent immigration trends and humanitarian crises nearest its borders and beyond. Spain must also consider the unique effects of its geographic position as the portal for foreign nationals seeking to enter Europe from the Mediterranean region and northern Africa.

Considering the legal framework above, the question Spain and most of Europe are asking is whether the Schengen Territory and its principle of free circulation or movement require revision. However, this question raises others: Is Europe’s principle of free circulation at risk given the current state of migration trends? And how should the principle of non-refoulement apply within Europe’s unique legal immigration system?

14. *Id.*

15. European Commission: Migration and Home Affairs, 2015, *Schengen Area*, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index_en.htm.

16. *Id.*

17. United Nations Convention Relating to the Status of Refugees, *adopted* July 28, 1951, 189 U.N.T.S. 150 (entered into force Apr. 22, 1954).

18. *Id.*; United Nations Protocol Relating to the Status of Refugees, *opened for signature* Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 (entered into force Oct. 4, 1967; for United States Nov. 1, 1968), <http://www.unhcr.org/3b66c2aa10.html>.

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C. FUTURE IMPLICATIONS

In summary, Spain's past and recent migration trends highlight the growing need for all of Europe to reconsider its immigration laws, policies, and principles. While a cohesive approach is necessary to address the volume of immigration and emigration affecting Spain and the rest of Europe, how Spain and Europe will apply the principles of non-refoulement and free circulation will be an ongoing challenge for years to come considering lingering economic crises and the overall refugee crisis in Africa and the Middle East. These principles deserve careful attention as Spain and Europe endeavor to review and perhaps modify some of their most valued overarching and historic principles in the future.

III. *Hernandez-Avalos v. Lynch*: How a Family-Based Particular Social Group Gives New Hope to Central American Refugee Families¹⁹

As any immigration litigator can tell you, defining particular social groups for asylum cases is an intellectual challenge. The case law in this area has generally not been favorable for refugees fleeing gang violence in Central America. Nonetheless, the United States Court of Appeals for the Fourth Circuit's precedential decision in *Hernandez-Avalos v. Lynch* brings new life to legal arguments regarding the construction of a particular social group, and more importantly, new hope to refugee families fleeing gang violence.²⁰

Maydai Hernandez-Avalos and her son, Kevin Avalos-Rojas, fled El Salvador after members of the Mara 18 gang tried to recruit Kevin (then twelve years old) to join their gang. On two occasions, Maydai told the gang members that her son would not join the gang. In response, one of them pointed a gun at her and threatened to kill her if she interfered with their recruitment of Kevin. During the second encounter, the Mara 18 members told Maydai they would return to claim Kevin or to kill her. The next day, Maydai and Kevin left El Salvador and made their way to the United States, where they applied for asylum.

In support of her asylum claim, Maydai argued that the Mara 18 members persecuted her on account of her family ties to Kevin. The Board of Immigration Appeals (BIA) disagreed, stating that the threats were not made on account of her relationship to Kevin, but rather because she would not consent to her son engaging in criminal activity. The Fourth Circuit reversed, stating that Maydai's

relationship to her son is why she, and not another person, was threatened with death if she did not allow him to join Mara 18, and the gang members' demands leveraged her maternal authority to control her son's activities. The BIA's conclusion that these threats were directed at her not because she is his mother but because she exercises control over her son's activities draws a meaningless distinction under these facts.²¹

¹⁹ Sabrina Damast, Law Office of Sabrina Damast, Los Angeles, CA.

²⁰ *Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015).

²¹ *Id.* at 950.

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This decision breathes new life into asylum claims tied to threats of gang recruitment and persecution. Maydai's story is not unique, but is rather one of many stories of parents who are threatened with death when they try to protect their children from a gang's recruitment efforts. These parents, at least those residing in the Fourth Circuit, now have a renewed hope of being granted asylum.

IV. Canada: An Immigration Year in Review²²

The Canadian government implemented important changes to its immigration program in 2015.²³ The Government released Express Entry, a new online selection and application management system for permanent residency applications, as well as a new Employer Portal for work permit applications. The Government also enacted new administrative penalties for employer compliance violations.

A. EXPRESS ENTRY: SKILLED WORKER IMMIGRATION SELECTION SYSTEM

In January 2015, the Canadian government launched Express Entry, a new online immigration system that was designed to manage the selection of skilled workers for permanent migration to Canada under the following three federal economic immigration programs: (1) Federal Skilled Worker (FSW); (2) Federal Skilled Trades (FST); and (3) Canadian Experience Class (CEC).²⁴ Express Entry also applies to part of the Provincial Nominee Programs (PNP).²⁵ Citizenship and Immigration Canada (CIC) states that Express Entry "does not change or replace the requirements" of the existing federal economic immigration programs, but merely provides a new way for CIC to select skilled immigrants.²⁶ Nevertheless, Express Entry does add a "new layer of requirements" before a foreign national can submit an application for permanent residence status.²⁷ Under Express Entry, any foreign national seeking permanent residence status through one of the federal economic immigration programs must first obtain an Invitation to Apply (ITA) before he or she can submit a permanent residence application to CIC.²⁸

22. Alexandria Sodini, a member of the global immigration team at Berry Appleman & Leiden LLP. She provides Canadian migration support to the world's largest and best-known multinational companies and their employees.

23. CIC NEWS, Stay Current with Canadian Immigration News, <http://www.cicnews.com/2015/> (last visited Nov. 17, 2015).

24. CITIZENSHIP & IMMIGR. CAN., *Notice—Express Entry questions and answers*, <http://www.cic.gc.ca/english/department/media/notices/2014-12-01.asp> (last modified July 24, 2015).

25. *Id.*

26. CITIZENSHIP & IMMIGR. CAN., *Express Entry System—Technical Briefing* <http://www.cic.gc.ca/english/resources/publications/employers/express-entry-presentation-briefing.asp> (last modified Feb. 2, 2015); THE CANADIAN BAR ASS'N, *Express Entry*, (Dec. 2014), available at <http://www.cba.org/CBA/submissions/pdf/14-77-eng.pdf>.

27. THE CANADIAN BAR ASS'N, *CIC's Express Entry Program coming January 1, 2015 Crucial Facts for Canadian Employers and Prospective Immigrants*, (2014), available at http://www.cba.org/CBA/sections_Cship/pdf/Express_Entry_Fact_Sheet_2014.pdf.

28. CITIZENSHIP & IMMIGR. CAN., *Fill out your profile—Skilled immigrants (Express Entry)* <http://www.cic.gc.ca/english/immigrate/skilled/profile.asp> (last modified May 28, 2015), THE CANADIAN BAR ASS'N, *supra* note 27.

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Express Entry was introduced with an objective to create a more user-friendly system with “faster and more efficient processing” and “better ability to respond to Canada’s labour market.”²⁹ By only accepting permanent residence applications from foreign nationals who have been invited to apply, the Canadian government aims to prevent “the build-up of application backlogs” and ensure that only candidates who are “most likely to succeed” in Canada are “invited to apply” rather than those who happen to be first in line, as it was under the prior system.³⁰

The permanent residence application process under Express Entry consists of two steps.³¹ First, the foreign national must create a free online Express Entry profile, providing information about his or her skills, work experience, language abilities, education, and other details.³² Second, the foreign national must receive an Invitation to Apply (ITA) from CIC and submit an online permanent residence application under one of the federal economic immigration programs.³³

Once the online profile is created, CIC will use the information provided in the profile to determine the foreign national’s eligibility to immigrate to Canada.³⁴ To be eligible, a foreign national must meet the requirements of at least one of the federal economic immigration programs.³⁵ If eligible, the candidate will be placed into the Express Entry pool with other candidates.³⁶ Each candidate in the pool is assigned a score by CIC based on the information the candidate provides in his or her online profile.³⁷ Candidates in the Express Entry pool can earn a maximum of 1,200 points.³⁸ The score is referred to as the Comprehensive Ranking System (CRS).³⁹ The CRS score is divided into four categories: (1) human capital factors; (2) spouse/common law partner factors; (3) skill transferability factors; and (4) additional points.⁴⁰ Under the human capital factors, a candidate can earn up to 500 points for age, level of education, official language proficiency, and Canadian work experience.⁴¹ Skill transferability points are given for the candidate’s language proficiency in combination with both foreign and Canadian work experience.⁴² A candidate can receive up to 100 points under the skill transferability factors.⁴³ Candidates,

29. CITIZENSHIP & IMMIGR. CAN., *supra* note 24.

30. CITIZENSHIP & IMMIGR. CAN., *Express Entry Mid-Year Report*, <http://www.cic.gc.ca/english/resources/reports/ee-midyear-2015.asp> (last modified July 31, 2015); CITIZENSHIP & IMMIGR. CAN., *supra* note 24.

31. CITIZENSHIP & IMMIGR. CAN., *supra* note 27.

32. CITIZENSHIP & IMMIGR. CAN., *Express Entry System*, <http://www.cic.gc.ca/english/resources/publications/express-entry-presentation-immigrants.asp> (last modified Jan. 21, 2015).

33. *Id.*

34. CITIZENSHIP & IMMIGR. CAN., *supra* note 28.

35. CITIZENSHIP & IMMIGR. CAN., *supra* note 30.

36. CITIZENSHIP & IMMIGR. CAN., *supra* note 28.

37. *Id.*

38. CITIZENSHIP & IMMIGR. CAN., *Express Entry—Comprehensive Ranking System (CRS) Criteria*, <http://www.cic.gc.ca/english/express-entry/grid-crs.asp#a4> (last modified June 8, 2015); CITIZENSHIP AND IMMIGR. CAN., *supra* note 27.

39. CITIZENSHIP & IMMIGR. CAN., *Express Entry—Comprehensive Ranking System (CRS) Criteria*, <http://www.cic.gc.ca/english/express-entry/grid-crs.asp#a4> (last modified June 8, 2015).

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

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who received a provincial/territorial nomination or an offer of employment backed by a positive Labor Market Impact Assessment, are awarded an additional 600 points.⁴⁴

Candidates with the highest CRS score in the pool will receive an ITA for permanent residency.⁴⁵ Once an ITA is received, candidates have sixty days to submit their electronic applications along with supporting documents for permanent residence under one of the federal economic immigration programs.⁴⁶ Candidates may decline an invitation and return to the pool.⁴⁷ If a candidate does not receive an ITA after one year of being in the pool, his or her Express Entry profile will expire.⁴⁸ Upon expiration of the Express Entry profile, the foreign national may complete and submit a new Express Entry online profile.⁴⁹

CIC will decide timing of Express Entry draws based on the “fluctuations in the local labour market” as well as “the number of candidates in the pool.”⁵⁰ The decision regarding the number of invitations to be issued at each drawing will depend on the need to meet the Annual Immigration Levels Plan.⁵¹ When Express Entry was launched in January 2015, the government’s target was “to select between 172,100 and 186,700 candidates over the course of the year.”⁵² In July 2015, the Canadian government released an Express Entry Mid-Year Report.⁵³ According to this report, as of July 6, 2015, a total of 112,701 foreign nationals submitted an Express Entry profile. Out of this number, 41,218 foreign nationals were accepted into the Express Entry pool and 12,017 were invited to apply for permanent residence status.⁵⁴ The remaining candidates were either found ineligible because they did not meet the requirements of at least one of the economic immigration programs, or withdrew their profile.⁵⁵ Of the number of candidates invited to apply, 7,528 candidates submitted their applications for permanent residence.⁵⁶ As of the July report date, 655 permanent residence applicants were approved, but the “majority of the applications” were “still in progress.”⁵⁷

B. THE INTERNATIONAL MOBILITY PROGRAM: NEW REQUIREMENTS AND NEW EMPLOYER PORTAL

In 2014, the Canadian government reorganized the Temporary Foreign Worker Program (TFWP) into two separate programs.⁵⁸ Work permit streams that require

44. CITIZENSHIP AND IMMIGR. CAN., *supra* note 39.

45. *Id.*46. *Id.*47. CITIZENSHIP & IMMIGR. CAN., *supra* note 30.48. CITIZENSHIP & IMMIGR. CAN., *Once you are in the pool – Skilled immigrants (Express Entry)*, <http://www.cic.gc.ca/english/immigrate/skilled/pool.asp> (last modified July 21, 2015).49. *Id.*50. CITIZENSHIP & IMMIGR. CAN., *supra* note 27.51. *Id.*; CITIZENSHIP & IMMIGR. CAN., *supra* note 24.52. CITIZENSHIP & IMMIGR. CAN., *supra* note 30.53. *Id.*54. *Id.*55. *Id.*56. *Id.*57. *Id.*58. EMP’T & SOC. DEV. CAN., *Improving Clarity, Transparency and Accountability of the Temporary Foreign Worker Program*, http://www.edsc.gc.ca/eng/jobs/foreign_workers/reform/index.shtml (last modified Feb. 25,

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Canadian employers to first obtain a Labor Market Impact Assessment (LMIA) prior to hiring foreign workers remained part of the TFWP, whereas work permit streams that are exempt from the LMIA requirements (LMIA-exempt) became part of the newly formed International Mobility Programs (IMP).⁵⁹ LMIA-exempt work permit streams include intra-company transferees (ICT), workers covered under free trade agreements (i.e., NAFTA), post-graduate work permit (PGWP) holders, and foreign nationals participating in exchange programs such as International Experience Canada (IEC).⁶⁰

1. *Employer Portal and Offer of Employment Information*

To strengthen accountability of Canadian employers hiring temporary foreign workers under IMP and to ensure LMIA-exempt work permit streams “continue to promote Canada’s economic and labour market interests,” CIC introduced significant changes to IMP in 2015.⁶¹

On February 21, 2015, CIC introduced a new requirement whereby a Canadian employer seeking to hire a foreign national under IMP must submit the offer of employment information using IMM 5802 Form: “Offer of Employment to a Foreign National Exempt from a Labour Market Impact Assessment (IMM 5802),” and pay a new employer compliance fee prior to submitting an LMIA-exempt work permit application to CIC.⁶² Shortly thereafter, CIC launched a new online system, called the Employer Portal, designed to manage the “processing of offers of employment made by Canadian employers to foreign workers” under IMP.⁶³ As of October 26, 2015, all Canadian employers, except those exempt from the employer compliance fee requirement, must submit the offer of employment information to CIC and pay the employer compliance fee using the Employer Portal.⁶⁴ CIC will not accept an LMIA-exempt work permit application if the employer failed to submit the offer of employment information and pay the compliance fee in advance.⁶⁵

2015); CAN. GAZETTE, *Regulations Amending the Immigration and Refugee Protection Regulations (International Mobility Program)* (Feb. 11, 2015), <http://www.gazette.gc.ca/rp-pr/p2/2015/2015-02-11/html/sor-dors25-eng.php>.

59. *Id.*

60. CITIZENSHIP & IMMIGR. CAN., *International Mobility Program: Labour Market Impact Assessment exemption codes*, <http://www.cic.gc.ca/english/resources/tools/temp/work/opinion/codes.asp>, (last modified May 21, 2015); CITIZENSHIP & IMMIGR. CAN., *Study permits: Post Graduation Work Permit Program*, <http://www.cic.gc.ca/english/resources/tools/temp/students/post-grad.asp> (last modified Dec. 12, 2014); *International Mobility Program: Canadian interests – Reciprocal employment – International Experience Canada [R205(b)] (exemption code C21)*, <http://www.cic.gc.ca/english/resources/tools/temp/work/opinion/experience/index.asp> (last modified Aug. 26, 2015).

61. CITIZENSHIP & IMMIGR. CAN., *Notice—Changes to strengthen employer accountability under the International Mobility Program* (Feb. 9, 2015), <http://www.cic.gc.ca/english/department/media/notices/2015-02-09.asp>; EMP’T & SOC. DEV. CAN., (Sep. 29, 2014) *Reforming the International Mobility Programs*, http://www.esdc.gc.ca/eng/jobs/foreign_workers/reform/imp.shtml.

62. CITIZENSHIP & IMMIGR. CAN., *International Mobility Program: Employer-specific work permits with Labour Market Impact Assessment exemptions*, <http://www.cic.gc.ca/english/resources/tools/temp/work/admissibility/specific.asp> (last modified Oct. 23, 2015).

63. CIC NEWS, *Canada Rolls Out ‘Employer Portal’ for International Mobility Program* (Nov. 2015), <http://www.cicnews.com/2015/11/canada-rolls-employer-portal-international-mobility-program-116508.html#sthash.5wktz3F7.drRvHL0v.dpuf>.

64. *Id.*; CITIZENSHIP & IMMIGR. CAN., *supra* note 62.

65. CITIZENSHIP & IMMIGR. CAN., *supra* note 61.

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The Employer Portal is essentially an online version of the IMM 5802 Form.⁶⁶ The sections of the portal, as well as the online questions, correspond to the information requested on the IMM 5802 Form.⁶⁷ When completing the Employer Portal, employers are requested to provide information about their business, the foreign worker, and the job details, as well as the wage and benefits information.⁶⁸ CIC will use the information submitted through the Employer Portal when conducting a compliance review.⁶⁹ Once each section of the Employer Portal is completed and the employer compliance fee is paid, the user may submit the information to CIC.⁷⁰ Once submitted, the system will generate an offer of employment or confirmation ID number.⁷¹ Some employers have received the ID number instantaneously, but others have had to wait for a few hours, or even a few days.⁷² Employers must include the confirmation number in the work permit application submitted to CIC.⁷³

2. *New Compliance and Privilege Fees*

The compliance fee is \$230 CAD and only applies to LMIA-exempt work permit applications.⁷⁴ The fee is required for each application, including any subsequent renewal applications.⁷⁵ This compliance fee is in addition to the current \$155 CAD application fee.⁷⁶ CIC indicated that it will refund the compliance fee if the work permit application is denied, or the employer withdraws the offer of employment before the work permit is issued. The fees collected will be used to fund costs associated with compliance activities such as inspections of employers using IMP.⁷⁷ CIC is planning to inspect around twenty-five percent of such businesses each year to ensure compliance with IMP requirements.⁷⁸

CIC also introduced a new fee for open work permit applications. An open work permit authorizes a foreign national, for a specified period of time, to work for any employer.⁷⁹ An open work permit is available to foreign nationals participating in an exchange program under International Experience Canada (IEC), students who have graduated from a Canadian university, and spouses of skilled foreign workers.⁸⁰ The new fee is referred to as Privilege Fee and is \$100 CAD per application.⁸¹ Unlike the

66. CITIZENSHIP & IMMIGR. CAN., *supra* note 62.

67. *Id.*; CIC NEWS, *supra* note 63.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. CIC NEWS, *supra* note 63.

73. *Id.*; CITIZENSHIP & IMMIGR. CAN., *supra* note 62.

74. CITIZENSHIP & IMMIGR. CAN., *supra* note 61.

75. *Id.*

76. *Id.*

77. *Id.*

78. CITIZENSHIP & IMMIGR. CAN., *supra* note 61; Greenberg Traurig, *Canada Introduces More Rigorous Requirements for Work Permits in Attempt to Increase Immigration Compliance*, A GREENBERG TRAURIG BLOG (Nov. 4, 2014), <http://www.gtlaw-insidebusinessimmigration.com/global-immigration/canada-introduces-more-rigorous-requirements-for-work-permits-in-attempt-to-increase-immigration-compliance/>.

79. CAN. GAZETTE, *supra* note 58.

80. *Id.*

81. *Id.*

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Employer Compliance Fee, the Privilege Fee will not be refunded if the work permit application is denied or withdrawn by the applicant.⁸²

C. NEW ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF TFWP AND IMP
 CONDITIONS

In July 2015, the Canadian government announced new, strict penalties for Canadian employers who violate the conditions of the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP).⁸³ The new regulations will come into effect on December 1, 2015.⁸⁴ The goal of these regulations is to encourage employers of temporary foreign workers to comply with the TFWP and IMP conditions as well as provide a proportional penalty based on “varying degrees of non-compliance.”⁸⁵ The current penalty for non-compliance with the conditions is a two-year ban from employing temporary foreign workers.⁸⁶ Under the new regulations, government inspectors will be able to impose a ban for “1, 2, 5, and 10 years” and a permanent ban for “the most serious violations,” as well as monetary penalties as implemented by a “system of administrative monetary penalties (AMPs).”⁸⁷ The monetary penalties will be determined based on the type and severity of violations, “employer’s history of violations,” and size of a business.⁸⁸ The fines can range from \$500 CAD to \$100,000 CAD per violation and up to \$1 million CAD for multiple violations in a single year.⁸⁹ The regulations also “encourage employers to voluntarily disclose” violations by offering to reduce the penalties if the government officials find the voluntary disclosure acceptable.⁹⁰

D. CONCLUSION

As discussed above, this year, the Canadian government implemented important changes to both the permanent and temporary foreign worker programs. Moving into 2016, we will see the true impact of these changes on the foreign workers and the Canadian employers as well as the Canadian labour market.

82. *Id.*

83. CIC NEWS, *New Penalties for Canadian Employers Found in Non-Compliance of Temporary Foreign Worker Program* (Aug. 2015), <http://www.cicnews.com/2015/08/penalties-canadian-employers-noncompliance-temporary-foreign-worker-program-085658.html#sthash.07VNvcUc.dpuf>.

84. CITIZENSHIP & IMMIGR. CAN., *Regulations Amending the Immigration and Refugee Protection Regulations* (July 1, 2015), <http://gazette.gc.ca/rp-pr/p2/2015/2015-07-01/html/sor-dors144-eng.php>.

85. *Id.*

86. *Id.*; see also News Release, CITIZENSHIP & IMMIGR. CAN., *CIC Archived - Harper Government brings in stiff new penalties for those who abuse foreign worker programs* (July 6, 2015), <http://news.gc.ca/web/article-en.do?nid=996239>.

87. *Id.*; see also CIC NEWS, *supra* note 63.

88. *Id.*

89. *Id.*

90. *Id.*

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