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Erratum

In the comment, *Canada's Skilled Worker Immigration Regulation and Its Impact on The Canadian Economy* by Manjula N. Variyam, published in Volume 12, Issue 4 of the *Law and Business Review of the Americas*, the footnotes were misnumbered due to a typesetting error. The following comment is the corrected version in its entirety and should be used for citation purposes.

Joe Christensen, Inc. apologizes to the author and subscribers for any embarrassment or inconvenience this omission may have caused.

CANADA'S SKILLED WORKER IMMIGRATION REGULATION AND ITS IMPACT ON THE CANADIAN ECONOMY

*Manjula N. Variyam**

IN February 2002, the government of Canada launched an innovative strategy aimed at improving Canada's economic status. As part of this initiative, it started a Skilled Workers Program in the regulations of the 2002 Immigration and Refugee Protection Act (IRPA).¹ According to the regulations, a points system forms the basis for the qualifications to be a skilled worker.² This system emphasizes human capital factors thought to be predictors of lifetime productivity and labor market adaptability. The net effect of this immigration law and policy on Canada's economy has been positive, but various studies show that the new system may not be as effective as hoped.

I. ECONOMIC GOALS OF CANADA'S IMMIGRATION POLICY

Canada considers immigration to be "a key tool in meeting [its] economic needs and in making [it] a land of expanding opportunity."³ Canada seeks to make itself the destination choice for immigrants because the government believes that immigrants, among others, "will contribute to a strong, dynamic, world-class economy."⁴ One of the aims of Citizenship and Immigration Canada (CIC), the immigration enforcement wing of the Canadian government, is to maximize the economic benefits of migration to Canada.⁵

In view of this goal, the Canadian government has divided immigrants to Canada into three categories: (1) economic class, comprised of skilled workers, business immigrants, provincial nominees, live-in caregivers, and members of their immediate family; (2) family class, comprised of spouses, partners, children, parents, and grandparents of sponsors; and

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1. Immigration and Refugee Protection Regulations SOR/2002-227 (Can.).

2. *Id.* at § 75.

3. TREASURY BOARD OF CANADA SECRETARIAT, RPP 2003-2004 Citizenship and Immigration Canada § I(A), available at <http://www.tbs-sct.gc.ca/est-pre/20032004/pdf/ci-e.pdf> [hereinafter RPP 2003-2004].

4. *Id.*

5. *Id.*

(3) refugees.⁶ The economic class forms the bulk of immigrants to Canada. “[O]f the 189,700 immigrants admitted in 1999, about 105,400 or 56 percent were economic immigrants.”⁷ In addition, Canadian immigration policy has always “focused on the young, highly-skilled immigrant.”⁸

Education of immigrants is another goal of the Canadian government that ties together with their economic goal. The Canadian government recognizes that “[c]ountries that succeed in the 21st century will be those with citizens who are creative, adaptable and skilled.”⁹ The future, according to the Canadian government, belongs to societies who invest in knowledge.¹⁰ Consequently, it has set forth policies and goals to increase the education level of the Canadian people, including immigrants.¹¹ Accordingly, one of the goals that the Canadian government has set for itself regarding highly skilled immigrants is that by 2010, 65 percent of adult immigrants should have post-secondary education.¹²

II. STATE OF CANADIAN IMMIGRATION PRIOR TO 2002

The selection system in use prior to 2002 was an occupational targeting system, whereby the government sought to admit immigrants based on perceived shortages in occupations.¹³ The system emphasized shortages in certain occupations and then sought to admit immigrants to fill those shortages.¹⁴ Skilled worker applicants therefore needed to have work experience in an occupation that had a shortage of workers in Canada.¹⁵

The immigration policy, as enforced prior to 2002, did not keep pace with the changing economic landscape of Canada and other nations.¹⁶ The selection system in 2002 was premised on the capacity of the government to intervene significantly in management of labor markets and to match the skills of foreign applicants to specific Canadian occupational

6. CITIZENSHIP AND IMMIGRATION CANADA, FACTS AND FIGURES: IMMIGRATION OVERVIEW PERMANENT AND TEMPORARY RESIDENTS 1 (2004), available at <http://www.cic.gc.ca/english/pub/facts2004/index.html>.

7. OFFICE OF THE AUDITOR GENERAL OF CANADA, CITIZENSHIP AND IMMIGRATION CANADA — THE ECONOMIC COMPONENT OF THE CANADIAN IMMIGRATION PROGRAM § 3.26 (2000), available at <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/0003ce.html> [hereinafter 2000 OAG REPORT].

8. Peter Rekaï, *US and Canadian Immigration Policies: Marching Together to Different Tunes*, C.D. HOWE INSTITUTE COMMENTARY, Nov. 2002, at 3.

9. GOVERNMENT OF CANADA, KNOWLEDGE MATTERS: SKILLS AND LEARNING FOR CANADIANS, CANADA'S INNOVATION STRATEGY 5 (2002), available at <http://www.innovationstrategy.gc.ca/>.

10. *Id.* at 4.

11. *Id.* at 1-56.

12. *Id.* at 53.

13. 2000 OAG REPORT, *supra* note 7, at § 3.69.

14. OFFICE OF THE AUDITOR GENERAL OF CANADA, SELECTION CRITERIA FOR IMMIGRANTS IN THE ECONOMIC COMPONENT app. C, available at http://www.oag-bvg.gc.ca/domino/reports.nsf/html/0003ac_e.html (last visited April 11, 2000).

15. CITIZENSHIP AND IMMIGRATION CANADA, BUILDING ON A STRONG FOUNDATION FOR THE 21ST CENTURY: NEW DIRECTIONS FOR IMMIGRATION AND REFUGEE POLICY AND LEGISLATION 28 (1998) [hereinafter 1998 CIC REPORT].

16. *See* 2000 OAG REPORT, *supra* note 7, at § 3.69.

shortages.¹⁷ In a world where “industries appear[ed] and disappear[ed] almost overnight,” it was not possible for the government to micro-manage the labor market supply and demand.¹⁸

In a report published in 2002, CIC stated, “[r]ecent studies show that the selection criteria for skilled workers are no longer adequate and are not supported by indicators of immigrants’ integration into Canadian society.”¹⁹ The report stated that the selection criterion in effect was not meeting its desired objectives partly because the list of occupations indicating a shortage of workers was outdated.²⁰ There was a geographic discrepancy between the locations deemed to have shortage of workers and the locations preferred by immigrants.²¹ Moreover, predicting occupational shortages over the lifetime of an immigrant in his twenties or thirties was not possible.²²

The Canadian government sought to make up for these shortcomings by modifying the selection system to emphasize versatility and flexibility rather than focusing on specific occupations.²³ “Canada’s selection system for skilled workers need[ed] a sharper focus to augment the country’s human capital base.”²⁴ Accordingly, the government of Canada enacted IRPA in 2002 to meet the goals of Canada’s immigration policy.²⁵

III. IRPA

The IRPA is the “most comprehensive change to Canada’s immigration legislation since 1976.”²⁶ The IRPA states that “[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.”²⁷ The IRPA thus changed the focus of the economic class selection from shortage in occupations to economic adaptability. The IRPA further allows the government to promulgate regulations regarding

selection criteria, the weight, if any, to be given to all or some of those criteria, the procedures to be followed in evaluating all or some of those criteria and the circumstances in which an officer may substitute for those criteria their evaluation of the likelihood of a foreign national’s ability to become economically established in Canada.²⁸

17. 1998 CIC REPORT, *supra* note 15, at 29.

18. *Id.*

19. 2000 OAG REPORT, *supra* note 7, at § 3.69.

20. *Id.*

21. Arthur Sweetman, *Canada, in IMMIGRATION AS A LABOR MARKET STRATEGY – EUROPEAN AND NORTH AMERICAN PERSPECTIVES* 13, 15 (Jan Niessen & Yongmi Schibel eds., 2005), available at <http://www.migpolgroup.com/documents/2135.html>.

22. *See id.* at 16.

23. 1998 CIC REPORT, *supra* note 15, at 10.

24. *Id.* at 28.

25. Immigration and Refugee Protection Act, 2001 S.C., ch. 27 (Can.).

26. RPP 2003-2004, *supra* note 3, at § III(b).

27. Immigration and Refugee Protection Act, 2001 S.C., ch. 27 at § 12(2).

28. *Id.* at § 14(2)(a).

A. IRPA REGULATIONS

The regulations provide that a skilled worker is anybody who has worked for at least one year during the ten years prior to their visa application, in a job position that falls within a skilled work category as defined in the National Occupational Classification.²⁹ In order to determine if the skilled worker will be able to be economically established in Canada, IRPA introduced a new selection system for skilled workers based on a points system.³⁰ The points system considers the following factors: education (twenty-five points),³¹ proficiency in English or French (twenty four points),³² experience (twenty-one points),³³ age (ten points),³⁴ employment (ten points),³⁵ and adaptability (ten points).³⁶ To be selected under the skilled worker category, an applicant must score sixty-seven points out of the possible 100 points.³⁷

As a result, the regulations give maximum weight to education, with the maximum twenty-five points being awarded for educational credentials at a master's or a doctoral level and a total of at least seventeen years in full time studies.³⁸ The other factors and the weight to be awarded them represent the Canadian government's views on human capital factors thought to be predictors of lifetime productivity.³⁹ Thus, the regulations sought to address the Canadian government's educational and economic goals for immigrants.

B. ENFORCEMENT OF REGULATIONS

Section 18 of the IRPA requires everyone seeking to enter Canada to be examined by an immigration officer at the port of entry.⁴⁰ "In the case of foreign nationals seeking permanent status . . . a more detailed interview may be required before entry will be granted."⁴¹ The immigration officer at the port of entry has wide discretion in permitting immigrants to enter Canada.⁴² "To enforce the [IRPA], CIC investigates possible breaches of the Act."⁴³ If there is sufficient evidence of a breach of the

29. Immigration and Refugee Protection Regulations SOR/2002-227 at § 75(2).

30. *Id.* at §§ 75-83.

31. *Id.* at § 78.

32. *Id.* at § 79.

33. *Id.* at § 80.

34. *Id.* at § 81.

35. *Id.* at § 82.

36. *Id.* at § 83.

37. Sweetman, *supra* note 21, at 19.

38. Immigration and Refugee Protection Regulations SOR/2002-227 at § 78(2)(f).

39. IMMIGRATION AS A LABOR MARKET STRATEGY – EUROPEAN AND NORTH AMERICAN PERSPECTIVES 10 (Jan Niessen & Yongmi Schibel eds., 2005), available at <http://www.migpolgroup.com/documents/2135.html> [hereinafter Niessen & Schibel].

40. Immigration and Refugee Protection Act, 2001 S.C., ch. 27 at § 18.

41. CITIZENSHIP AND IMMIGRATION CANADA, CANADA'S IMMIGRATION LAW 25 (2002).

42. *See id.*

43. *Id.* at 30.

IRPA, CIC officers deal with the people involved through an administrative process, or may direct them to appear at an admissibility hearing.⁴⁴ "Appeals on a variety of matters under the [IRPA] are heard by the Immigration Appeals Division of the Immigration and Refugee Board. The Board is independent of CIC, and its members are trained in immigration law."⁴⁵

IV. ECONOMIC ANALYSIS OF IMMIGRATION

There are several theories that explain the economic impact of immigration on the host economy, the immigrant, and/or the source economy.⁴⁶ There are still others that consider immigration to have primarily social and cultural benefits, with only a neutral economic benefit.⁴⁷

One of the theories based on the host economy, called the Simon principle, states that the host country should admit immigrants as long as their contribution to the economy is positive.⁴⁸ When an immigrant's net economic impact is positive, the immigrant typically contributes more than the native-born in the form of taxes, while consuming fewer public services.⁴⁹ There are other effects of immigration that also impact the host economy, like effects on the labor market, demographics, and other externalities.⁵⁰

The economic impact of immigration may also be viewed from the point of the immigrant himself. "The central question in the immigrant's mind . . . [is] the time it will take to 'catch-up' to the . . . [native's] income level."⁵¹ Apparently, it takes around fifteen years for the foreign-born immigrant to catch up with the native-born.⁵² The rate of catch-up also depends on the source country.⁵³ Immigrants from some source countries like Britain and France tend to have faster catch-up rates compared to those from countries like China and the Philippines.⁵⁴

Another totally different economic view is to look at the underutilization of immigrants' skills in the host economy as a measure of the lack of economic impact from immigration.⁵⁵ Under this view, the economic impact of underutilization of skills is "the reduced value of the work done by immigrants because their qualifications were not recognized in the workplace" of the host economy.⁵⁶

44. *Id.*

45. *Id.* at 33.

46. Niessen & Schibel, *supra* note 39, at 11.

47. Sweetman, *supra* note 21, at 19.

48. Don J. DeVoretz, *Immigration Policy: Methods of Economic Assessment* (IZA, Discussion Paper No. 1217, 2004).

49. *Id.* at 1-3.

50. *Id.* at 7-11.

51. *Id.* at 15.

52. *Id.*

53. *Id.* at 15-16.

54. *Id.*

55. Jeffrey R. Reitz, *Tapping Immigrants' Skills: New Directions for Canadian Immigration Policy in the Knowledge Economy*, 11 IRPP CHOICES, Feb. 2005, at 1, 3.

56. *Id.*

A. IMPACT OF IMMIGRATION PRIOR TO 2002

Prior to 2002, immigrants selected based on the past selection system were not prospering at the same levels as native-born Canadians.⁵⁷ Between 1980 and 2000, the earnings of recent male immigrants decreased by 7 percent on average, and the gap between their earnings and those of their Canadian-born counterparts doubled.⁵⁸ Additionally, younger immigrants did not fare any better than their Canadian born counterparts, tending to show that foreign work experience did not bring the expected economic returns.⁵⁹ But younger immigrants, with university degrees, had a 3 percent increase in their real earnings between 1980 and 2000.⁶⁰ It remains to be seen how the new selection system will impact the earnings of highly skilled workers.

B. IMPACT OF IMMIGRATION AFTER 2002

The Canadian government has in place research plans and policies to determine the impact of immigrants on the Canadian labor market.⁶¹ But as of today, most of the published reports are from data based on the old selection system.⁶² Therefore, there is not sufficient data to determine the full economic impact of the IRPA after 2002.

Nevertheless, most of the trends from available studies indicate that the education emphasized points-based system is not having the desired impact on the Canadian economy.⁶³ The new immigration system has been effective in substantially increasing the education level of immigrants.⁶⁴ Recent immigrants are particularly highly educated and more likely to have a university degree compared to past immigrants.⁶⁵ But the points system does not differentiate between the qualities of education in various fields.⁶⁶ Because the field of study may have an impact on immigrants' earnings, as well as their potential to contribute positively to Canada's economy, there are suggestions that the points system should also incorporate post-secondary fields of study.⁶⁷

Further, although educational credentials among recent immigrants have increased, and are higher than the credentials of native-born Canadians, the trend in immigrant wages and employment has been

57. BENJAMIN DOLIN & MARGARET YOUNG, CANADA'S IMMIGRATION PROGRAM BP-190E 22 (Library of Parliament 2004).

58. *Id.*

59. *Id.*

60. *Id.* at n.57.

61. CITIZENSHIP AND IMMIGRATION CANADA, STRATEGIC RESEARCH AND REVIEW: MEDIUM TERM RESEARCH FRAMEWORK 14 (1998).

62. See CITIZENSHIP AND IMMIGRATION CANADA, STUDIES BASED ON THE LONGITUDINAL IMMIGRANT DATABASE, <http://www.cic.gc.ca/english/research/papers/menu-imdb.html> (last visited Sep. 30, 2005).

63. Reitz, *supra* note 55, at 4.

64. Sweetman, *supra* note 21, at 2.

65. *Id.* at 6.

66. *Id.* at 20.

67. *Id.* at 3.

downward.⁶⁸ This suggests that the real problem is not so much with their skill levels, but rather the extent that their foreign qualifications are recognized in the Canadian workplace.⁶⁹ Foreign educated immigrants earned \$2.4 billion less than their Canadian counterparts because they were working in occupations that were below their skill level.⁷⁰

Foreign work experience of immigrants is also increasingly discounted in the Canadian labor market.⁷¹ This discounting is the major factor in the decline of earnings of immigrants.⁷² But this discounting is not uniform across the board for all source countries.⁷³ The decline in returns from immigrants' foreign work experience in some source regions like Northwestern Europe has not changed; but that is not the case for immigrants from newer source regions like Eastern Europe and Africa.⁷⁴ For immigrants from these newer source regions, foreign work experience is essentially worthless.⁷⁵

This trend appears to indicate that the human capital theory may not apply to immigrants because factors used in the points-based system do not translate completely into productivity.⁷⁶ This might be because employers may not have the tools to assess the productive value of an immigrant worker's skills.⁷⁷ In the knowledge economy, as opposed to the industrial economy, assessment of immigrants' credentials is important, if not critical.⁷⁸ Therefore, if employers do not have the means to assess these skills, both in terms of educational credentials as well as foreign work experience, there will be underutilization of immigrants' skills and qualifications.⁷⁹

Various initiatives are being developed across Canada in response to these trends.⁸⁰ For example, CIC is funding projects to work with employers to develop labor-market language training.⁸¹ Because of the complexity of issues involved and the breadth of the impact across Canada, disparate institutions, agencies, and associations need to work together to reach a solution.⁸² It is too early to determine the effect of

68. Reitz, *supra* note 55, at 1, 3.

69. *Id.*

70. *Id.*

71. Garnett Picot & Arthur Sweetman, *The Deteriorating Economic Welfare of Immigrants and Possible Causes: Update 2005* 19 (Statistics Can., Analytical Studies Research Paper Series No. 262, 2005).

72. *Id.*

73. *Id.* at 20.

74. *Id.*

75. *Id.*

76. Reitz, *supra* note 55, at 1, 5.

77. *Id.*

78. *Id.*

79. *Id.*

80. Naomi Alboim, Ross Finnie, & Ronald Meng, *The Discounting of Immigrants' Skills in Canada: Evidence and Policy Recommendations*, 11 IRPP CHOICES, Feb. 2005, at 1, 20.

81. *Id.*

82. *Id.* at 21.

these policy changes and initiatives on the economic impact of immigration in Canada.

On the other hand, a few studies have shown that there is a positive, albeit small, impact of the new immigration policy on Canada's economy.⁸³ Because of the dominance of economic immigrants to Canada as opposed to other classes of immigrants, the net benefit to the government treasury due to immigration has been positive.⁸⁴ Thus, the contribution by immigrants to the Canadian treasury in the form of taxes has been greater than their consumption of public services.⁸⁵ Therefore, the overall impact on Canada's economy may be positive, though not as substantial as hoped.

V. CONCLUSION

Prior to 2002, the economic impact of immigrants in the economic class was not very high. This was attributed to the selection system, which was based on an occupational targeting approach. The old approach sought to manage the labor market and fill occupational shortages with immigrants. That system, however, proved to be inefficient and ineffective. Accordingly, the Canadian government enacted new immigration law, IRPA and corresponding regulations, which changed the old selection system. The new selection criterion was based on a points system to admit highly-skilled, highly educated, and adaptable immigrants. Recent trends suggest that the economic impact of the IRPA has not been as entirely positive as hoped. Nevertheless, some other evidence also shows a small but positive impact to the Canadian economy. But no comprehensive, large-scale studies have been completed to assess the full impact of IRPA and its regulations. Therefore it is too early to determine the economic impact of the skilled workers program on the Canadian economy.

83. Sweetman, *supra* note 21, at 2.

84. DeVoretz, *supra* note 49, at 1-3.

85. *See id.*

Updates

