

Frequently Asked Questions: Temporary Work Permits for Self-Employed Persons

What Fundamental Criteria Must Be Met by Self-Employed Persons

Immigration Regulation 20(5)(e)(i) allows for the issuance of work permits to foreign workers who will create or maintain *significant* benefits, opportunities, or employment for Canadians. In all cases, it is the responsibility of applicants to satisfy an Immigration Officer of the significant benefits that will accrue to Canada.

What are the Categories of Self-Employed Workers

Self-employed persons seeking temporary work permits fall into three general categories, each with its own confirmation exemption code:

- **Employment Related Benefits:** This confirmation exempt category refers to self-employed persons who will be in Canada temporarily to establish a business where their admission would result in significant benefits or opportunities in terms of *direct employment* for Canadians. The proposed business must be one for which Canadians will be recruited or trained. The applicant should submit a business proposal that is genuine and reasonable to support their application. A visa officer may issue a work permit, coded *Confirmation Exempt E01*, to the applicant if they otherwise meet Immigration requirements, have the appropriate business background, and intend to recruit Canadians to be employed in the business.
- **Entrepreneurial Immigrants:** This confirmation exempt category applies to entrepreneurial immigrants. These persons are at times granted Minister's Permits by visa officers for reasons of national interest which allow them to enter Canada and establish a business before their immigrant visa is issued and the visit to Canada will lead to eventual landing. Along with Minister's Permits, they will be issued with work permits, coded *Confirmation Exempt E03*. Only those persons who have met the definition and selection criteria as entrepreneurs will qualify under this category.
- **Non-Employment Related Benefits:** This confirmation exempt category applies to self-employed persons whose temporary admission will result in significant benefits or opportunities to Canada *other than direct employment*. This exemption category has been used for self-employed artists and businesspersons whose Canadian business

activities will result in significant artistic, cultural, or economic benefits to Canada. It would be prudent to accompany applications for work permits under this category with curriculum vitae, academic and professional qualifications, letters of reference, and copies of previous tax returns showing income from self-employment. A visa officer may issue work permits, coded *Confirmation Exempt E05*, to applicants if they otherwise meet Immigration requirements.

What are the Factors Considered by Immigration Before Issuing Work Permits to Self-Employed Applicants

Factors which are considered by a visa officer in making a determination as to whether to grant a work permit for the purpose of establishing a business include:

- What are the chances that the proposed business will succeed?
- What foundation has been laid and what research has been done?
- Is the business sufficiently capitalized?
- Does the applicant have sufficient business acumen to make the proposal work?
- Are there technical qualifications that must be examined in terms of Canadian standards?
- Are the documents which have been submitted authentic?
- Would entry of the applicant create or maintain significant employment, benefits or opportunities for Canadian citizens or Permanent Residents?
- Does the business fill a need in the community or in the industry?
- Is the applicant otherwise admissible under the *Immigration Act*?

As in any application, officers must carefully review the facts presented to them and render reasonable decisions.

Are Considerations Given to Businesses With More Than One Owner

The issue of multiple owners or partners is occasionally raised. Where it is determined that the self-employed person's temporary admission would result in significant benefits or opportunities, and where there is a multiple proprietorship, work permits may be considered in the following circumstances:

- If the business had several *foreign* owners, only **one** owner would be eligible for a work permit that would be exempt the confirmation process.

- If one of the owners is a Canadian or Permanent Resident, **none** of the foreign owners would be granted work permits unless a confirmation had been approved.

In terms of partnerships, there is a difficulty in interpreting what constitutes ownership and whether a minority share holding is sufficient to permit the entry of a self-employed person. The guidelines noted above seek to prevent transfer of minority shares solely for the purpose of obtaining a work permit.

Regulation 20(5)(e)(i), which provides the regulatory basis for the entry of self-employed temporary workers, recognizes that entry of an individual will create or maintain significant employment, benefits or opportunities for Canadians. In cases of multiple ownership, the Department limits the confirmation exempt entry to one foreign owner of any enterprise. There may be some instances where incorporation may lead to abuse with respect to the admission of an applicant. However, it is not the intention of the Department to limit foreign investment or to prevent the entry of someone close to the investment to manage or to oversee the investment. As long as the majority of jobs in the business are taken by Canadian workers and the entry is limited to one foreign owner per business, then the Department is satisfied that the provision is not being abused.

Where Can Self-Employed Persons Apply for Work Permits

Immigration Regulation 19(3)(a)(vi) requires that all persons who seek temporary entry to establish a business in Canada must apply at a Canadian visa post for their work permits. These applications cannot be made at a Port of Entry.