



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

# OP 8

## Entrepreneur and Self-Employed

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## **Updates to chapter**

### **Listing by date:**

#### **Date: 2008-08-07**

Section 8.7, What is a qualifying business?, has been amended to provide instructions on how to assess entrepreneur or investor applicants' "business experience." Officers are now required to consider the aggregate financial information of more than one business.

Section 8.9, Calculating percentage of equity for Entrepreneur applicants, has been added.

Section 10.2 has been updated to reflect that entrepreneurs selected by Quebec on or after October 16, 2006 are subject to conditions specified by the province of Quebec.

#### **2004-09-15**

Section 6.15, Self Employed (R88), "relevant experience" and section 11.2 are amended to evaluate experience in cultural activities and athletics individually and in respect of both self-employment and participation at a world class level.

Section 8.8, What is the time factor?, has been amended to provide instructions on how to determine the time period in which one-year periods of business operations can be considered for the purpose of business experience calculation.

Section 8.20, What should be included in a personal net worth statement?, has been amended to remove the requirement that an entrepreneur's net worth be liquid. Entrepreneurs are now required to demonstrate a legally obtained net worth – but are not required to prove their intention and ability to conduct business in Canada beyond stating that they intend and will be able to meet their conditions.

#### **2003-06-04**

Both minor and substantive changes and clarifications have been made throughout this chapter.

- Section 11.3

In particular, section 11.3 better defines what intent and ability are in relation to applicants applying as farmers in the self-employed class. It describes the capital intensive nature of farming. It also describes the demanding skills and experience required to manage a farm. It will assist visa offices in making decisions on persons applying in this class.

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## 1. What this chapter is about

This chapter outlines the broad objectives of the Business Immigration Program. It focuses specifically on procedures used at visa offices abroad to process entrepreneurs and self-employed persons.

The chapter reviews:

- the regulatory definitions;
- selection criteria; and
- operational issues.

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**Note:** Procedures related to skilled workers are contained in chapter OP 6. Procedures related to investors are discussed in chapter OP 9.

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## 2. Program objectives

The Business Immigration Program includes three classes of applicants:

- entrepreneurs;
- investors;
- self-employed persons.

The principles of the Business Immigration Program are in keeping with the overall objectives of the *Immigration and Refugee Protection Act* (A3) and specifically those in A3(1)(a) and (c).

The program's objectives are:

- to promote economic development and employment by attracting people with venture capital, business acumen and entrepreneurial skills;
- to develop new commercial opportunities and to improve access to growing foreign markets by "importing" people who are familiar with those markets and their special requirements and customs;
- to support provincial and territorial economic objectives.

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## 3. The Act and Regulations

### 3.1. General sections of the Act that apply to entrepreneurs or self-employed persons:

Provision	Act and Regulations
Entering and remaining in Canada	A18, A19, A20
Economic immigration	A12(2)
Applications for visas	A11(1) and A11(2)
Provisions respecting conditions	A14(2)(d)
Authority of a province to impose conditions	A9(1)(d)

Authority for interviews by designated officer	A11(1), A15, A16
Authority to prescribe conditions	A14(2)(d)

**3.2. Specific Regulations that apply to entrepreneurs or self-employed persons:**

Provision	Act and Regulations
Definition of:	
"Entrepreneur" and "self-employed person"	R88
"Business Experience"	R88
"Full-time job equivalent"	R88
"Net assets", "net income" and "net worth"	R88
"Percentage of equity"	R88
"Qualifying business"	R88
Application to cancel conditions	R98(4)
Selection criteria, entrepreneur	R102(1), R102(2), R108
Units of assessment, entrepreneur	R102(2), R78, R79, R81, R103(1), R104
Selection criteriaexperience factor (entrepreneurs)	R103(1)
Selection criteria, self-employed person	R102(1) and R102(2)
Units of assessment, self-employed person	R78, R79, R81, R103(2), R105
Persons selected by a Province	R99(b), R96(b), R101(b)
Persons destined for the Province of Quebec	R108(1)(c)
Substitution of evaluation	R109(1) and R109(2)
Prescription of conditions subject to which members of the entrepreneur class and their family members shall be granted permanent resident status	R98(1) to R98(6)
Minimum points to passInvestors	R108(2)
Minimum points to passEntrepreneurs	R108(3)
Minimum points to passSelf-employed persons	R108(4)

**3.3. Forms required**

Form Title	Form Number
The Guide for Business Applicants and Application Form	IMM4000E
Application for Permanent Residence in Canada	IMM0008EGEN
Confirmation of Permanent Residence	IMM5509B

**4. Instruments and delegations**

For delegations on the Business Immigration Program, see IL 3, module 2.

**5. Departmental policy**

**5.1. Promoting business immigration**

Subject to operational priorities, officers may be able to provide objective information about the entrepreneur program to applicants and third-party representatives. Again, subject to operational pressures, officers, on occasion, will be able to take an active promotion and marketing role.

Promotional efforts should familiarize potential applicants with the services offered by provincial governments to business immigrants. Where feasible, officers should coordinate their promotional efforts with provincial government representatives.

Officers may encourage individuals to apply as entrepreneurs in a variety of ways. For more information, see:

- Holding business immigration seminars, section 5.2
- Supplying promotional material, section 5.3

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### **5.2. Holding business immigration seminars**

Where potential demand warrants and resources are available, business immigration seminars may be held to:

- provide information about the program;
- field questions from those in attendance; and
- clarify the roles and responsibilities of the federal and provincial governments.

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### **5.3. Supplying promotional material**

One example is the guide "Applying as a Business Immigrant" which is available on the CIC Internet site at <http://www.cic.gc.ca/english/pdf/kits/guides/4000ESap.pdf> (Simplified Application Process) or <http://www.cic.gc.ca/english/pdf/kits/guides/4000ESap.pdf> (Regular Application Process). The guide explains the entrepreneur, investor and self-employed classes and application procedures. It is a standard source of written counselling information on the Business Immigration Program from the federal government.

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### **5.4. Obtaining relevant information (A11)**

The onus is on the applicant to produce all relevant information in support of their application.

- The applicant is expected to provide original supporting documentation or certified copies as part of the application. If copies are provided with the application, originals must be produced at interview if requested.
- The applicant will need to provide certified translations in English or French, and an interpreter, as required. The interpreter must be a professional, and not a friend, relative, employee, lawyer or consultant of the applicant.

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### **5.5. Interviews**

Members of the business immigrant class may or may not be called to an interview; this puts them on a par with other classes of immigrants.

- Where the documentation submitted with the application clearly establishes eligibility, and the officer is satisfied it is authentic, waiving the interview may be appropriate. Local experience will drive office interview policy.
- Where it clearly establishes that the applicant is not an entrepreneur within the meaning of R88(1), officers will refuse as per R97(2).



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**5.6. Interviewing family members**

Officers may require the family members' presence, if necessary, for the purpose of assessing the application. This applies whether or not they will accompany the principal applicant to Canada.

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**Note:** As per A15, officers have the authority to hold the interview of the principal applicant and any family members (if interviewed) at the visa office or at any other appropriate location. There are no limitations upon what is considered appropriate, but the officer should have reasons for requiring the presence of family members at an interview.

**Note:** As always, all statutory requirements must be met before a visa may be issued, including medical, criminal, security, truthfulness and proof of relationship to the family members.

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**5.7. Provincial programs**

Officers are obliged to apply the regulatory definition of "entrepreneur." There are, however, provincial nominee programs that may select persons with a business background, and, who are not subject to the federal "entrepreneur" definition.

The provincial nominee programs reflect provincial or territorial priorities, experience and knowledge of local conditions.

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**5.8. Cost recovery fees and Right of Permanent Residence Fee (RPRF)**

The cost recovery fee is payable at the time the application is made and is not refundable. The cost recovery fee must only be charged for persons who intend to immigrate to Canada.

The RPRF is only refundable, upon request, to applicants who do not obtain permanent resident status. RPRF is also only for persons who intend to immigrate to Canada.

Successful applicants who decide not to use their visa must return the visa to the visa office in order to obtain a RPRF refund. Unsuccessful applicants should be informed as part of the refusal letter that they are entitled to a RPRF refund, if the RPRF has been paid. The visa office that finalized a case is responsible for processing any related RPRF refund.

Non-accompanying family members do not pay these fees even though they must undergo statutory processing.

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**5.9. Request to change category**

There is no regulatory authority to change categories once an application has been made. R97(2) describes minimal requirements for entrepreneurs and R100(2) describes minimal requirements for self-employed. The direction contained in the two paragraphs of the Regulations is clear. If the applicant does not meet the definition then the application is refused.

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**5.10. Effect of changing categories on cost recovery fees**

As indicated in the above paragraph, there is no provision to change categories.

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**5.11. Releasing information to provinces and territories**

Requests for information from the provinces and territories should be accommodated, subject to the provisions of the *Privacy Act* and *Access to Information Act*. Provinces and territories wish to be kept informed of visas issued to business immigrants destined to their area. A number of provinces have negotiated MOUs to facilitate the exchange of information.

The MOUs allow CIC to provide on a quarterly basis copies of the Applications for Permanent Residence in Canada, IMM 0008EGEN and Personal Worth Statement or Business Applicant Summary. As well, the entrepreneur's overseas address and contact address in Canada are included. This information allows the provinces to assist and monitor entrepreneurs before and after arrival.

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### 5.12. Requesting and reviewing documentation—general (A16)

Officers may request documentation to support the applicant's application. The officer should examine the documentation with the following elements in mind:

- the documentation requested should primarily provide evidence about the applicant's financial position and previous entrepreneurial background;
- the officer should actively discourage the submission of a formal business plan. There is no basis in law to require an entrepreneur to undertake a specific business activity or to locate in a specific area.

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### 5.13. Processing priority

Officers should accord the same processing priority to business immigrants as to other categories of immigrants. Applicants must understand that their application will not receive special consideration because they may have chosen to be represented by a lawyer or consultant. Lawyers and consultants representing business applicants should comply with the same standards applying to third-party representatives in any other kind of immigration case.

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### 5.14. Applying procedural fairness

When the officer has concerns about eligibility or admissibility, the applicant must be given a fair opportunity to correct or contradict those concerns. The applicant must be given an opportunity to rebut the content of any negative provincial assessment that may influence the final decision.

The officer has an obligation to provide a thorough and fair assessment in compliance with the terms and spirit of the legislation and procedural fairness requirements.

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### 5.15. File retention and disposal

The records of successful entrepreneurs must be retained for three years from the date of visa issuance.

Records of refused applicants must be retained five years from the date of final disposition.

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### 5.16. CAIPS records

The visa office should make its microfilmed or CAIPS records available to inland offices upon request, subject to the *Privacy Act*. Information from the visa office may assist in determining whether there has been any misrepresentation on the application for permanent residence. A40(1)(a) and A41(a) give inland officers the authority to gather the information they deem necessary for the purpose of assessing an "Application to cancel conditions—Entrepreneur" (IMM 5344B)". The officer may also require information when contemplating enforcement action against an entrepreneur for non-compliance with conditions imposed.

The Business Immigration Division at NHQ has access to CAIPS. The Division will review case notes from time to time, following contact with a province or a visa office. This will assist NHQ to monitor entrepreneurs who fail to meet their conditions.

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## 6. Definitions

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### 6.1. Audits

The objective of an audit is to express an opinion as to whether the financial statements present fairly, in all material respects, the financial position in accordance with generally accepted accounting principles. This is the highest form of assurance. The auditor performs the audit with

an attitude of professional scepticism and seeks reasonable assurance whether the financial statements are free of material misstatement.

In Canada it would be unusual for a small private business to have an audit. The *Canadian Business Corporations Act* requires an audit if sales exceed \$10,000,000; but even in that case, if the company is closely held, it can waive the audit requirement.

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## 6.2. Balance sheet

What is referred to as the balance sheet's accounting equation is:

- assets (the total money invested in the company) =
- liabilities (the money supplied by creditors) plus
- owners' equity (money supplied by owners) and retained earnings

Any asset or liability that will be converted into cash within one year is defined as "current" and the difference between current assets and current liabilities provides some indication of a company's liquidity and solvency.

The balance sheet provides a snapshot in time (usually at the business's year-end). Assuming that the information provided is accurate, it provides an indication of the assets available to conduct business operations and an indication of the scope of operations.

A series of balance sheets can reveal the soundness of the company's structure. Officers should watch for a decline in sales and increase in inventory, as this tends to indicate a downward trend for the business.

When reviewing the balance sheet, it should be remembered that it is based on transactions. As a result, it discloses a book value that may not correspond to the market value of an enterprise. For example, fixed assets will be recorded at historical cost less an estimate for depreciation that may not bear any resemblance to fair market value. This is especially true with land since fair market value may be many times the original cost.

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## 6.3. Business experience (R88)

For an entrepreneur, this means the management of a qualifying business and control of a percentage of equity for a specific time frame as outlined in R88. Further explanation is contained in Section 8.5 to Section 8.11 below.

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## 6.4. Compilation engagements

Compilation engagements are engagements in which a public accountant receives information from a client and arranges it into the form of a financial statement. The public accountant is concerned that the assembly of information is arithmetically correct; however, the public accountant does not attempt to verify the accuracy or completeness of the information provided.

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## 6.5. Entrepreneur

An entrepreneur is a foreign national who:

- a) has business experience;
- b) has a legally obtained net worth of at least \$300,000 [R88(1)];
- c) provides a written statement to an officer that they intend and will be able to meet the conditions referred to in subsection R98(1) to (4), specifically, that for a period of at least one year within a period of not more than three years after the day that the entrepreneur becomes a permanent resident they intend and will be able to:

- i) control a percentage of the equity of a qualifying Canadian business equal to or greater than 33 1/3 %;
- ii) provide active and ongoing management of the qualifying Canadian business; and
- iii) create at least one incremental full-time job equivalent in that business for Canadian citizens or permanent residents, other than the entrepreneur and their family members.

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**6.6. Financial statements**

A complete set of financial statements generally includes:

- balance sheet. See Balance sheet, Section 6.2 above;
- income statement (or "Statement of Income and Retained Earnings"). See Income statement, Section 6.8 below;
- statement of cash flows; and
- notes to the financial statements.

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**6.7. Full-time job equivalent**

"Full-time equivalent" means 1950 hours per year of paid employment [R88] and may consist of either one person working full-time, or several people working the equivalent of a full-time position [R98(1)(c)].

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**6.8. Income statement**

The income statement measures a company's sales (revenue), expenses and earnings over a specified time period, usually one year. It provides an indication of the scope of operations (along with the balance sheet).

The income statement is a good indicator of a company's financial performance. Earnings and trends in earnings are the best indicators of a company's financial well-being. Changes or trends in financial position should indicate whether the company is growing or declining.

The income statement should help the officer determine the company's net book value (if the business were to be sold, how much would it realize?) and the number of its employees (from the wage and salary expenses).

In some cases, small businesses may only be able to produce an income statement generated specifically for tax purposes.

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**6.9. "Net worth"**

"Net worth" in this context is the fair market value of all assets minus the fair market value of all liabilities of the applicant and his spouse or common law/conjugal partner.

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**6.10. Percentage of equity**

This refers to varying degrees of ownership of equity in a business, depending on whether it is a sole proprietorship, a corporation, or a partnership or joint venture. See Section 8.11 below.

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**6.11. Personal net worth statement**

The personal net worth statement includes both business and personal assets and liabilities of the applicant as well as those of the spouse or common-law partner/conjugal partner.

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**6.12. Qualifying business**

This is a business—other than one operated for the purpose of deriving investment income—for which there is documentary proof of a specific equity/full-time job equivalent/net asset relationship in a specific time frame, as set out in R88 and explained in Section 8.7 below. The term refers to a business already managed by the applicant at the time of application.

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**6.13. Qualifying Canadian business**

This is a business operated in Canada for which there is in any year documentary evidence of a specific equity/full-time job equivalent/net asset relationship in a specific time frame, as set out in R88 and explained in section 8.7 below.

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**6.14. Review engagements**

Review engagements are distinguishable from audits in that the scope of review is less than that of an audit and therefore the level of assurance provided is lower. A review consists primarily of enquiry, analytical procedures and discussions related to information supplied to the public accountant by the enterprise with the limited objective of assessing whether information being reported on is plausible within the framework of appropriate criteria.

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**6.15. Self-employed (R88)**

A “self-employed person” means a foreign national who has relevant experience and has the intention and ability to be self-employed in Canada and to make a significant contribution to specified economic activities in Canada.

“Relevant experience” in respect of

a) a self-employed person, other than a self-employed person selected by a province, means a minimum of two years of experience, during the period beginning five years before the date of application for a permanent resident visa and ending on the day a determination is made in respect of the application, consisting of

(i) in respect of cultural activities,

(A) two one-year periods of experience in self-employment in cultural activities,

(B) two one-year periods of experience in participation at a world class level in cultural activities, or

(C) a combination of a one-year period of experience described in clause (A) and a one-year period of experience described in clause (B),

(ii) in respect of athletics,

(A) two one-year periods of experience in self-employment in athletics,

(B) two one-year periods of experience in participation at a world class level in athletics, or

(C) a combination of a one-year period of experience described in clause (A) and a one-year period of experience described in clause (B), and

(iii) in respect of the purchase and management of a farm, two one-year periods of experience in the management of a farm

b) a self-employed person selected by a province, has the meaning provided by the law of the province.

Specified economic activities in respect of a self-employed person, other than a self-employed person selected by a province, means cultural activities, athletics or purchasing and managing a

farm. A self-employed person selected by a province has the meaning provided by the law of the province.

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## 7. Procedures: General guidelines for assessing eligibility

The following sections outline procedures officers will follow to assess the eligibility of entrepreneurs and self-employed applicants.

For more information, see:

- Forms required, section 7.1 below;
- Roles and responsibilities for processing entrepreneurs and self-employed persons, section 7.2 below;
- Pre-application counselling, Section 8.1 below;
- Assessing eligibility, Section 8.4 below;
- Assessing admissibility, Section 8.15 below;
- Allowing early entry, Section 8.36;
- Issuing the visa, Section 9;
- Entrepreneurs destined to Quebec, Section 10;
- Refusal of an entrepreneur application, Section 8.33.

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### 7.1. Forms required

Schedule 6, together with the IMM 0008EGEN, provides information on the applicant's business and educational background.

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**Note:** Missions may wish to tailor additional forms that are location-specific.

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### 7.2. Roles and responsibilities for processing entrepreneurs and self-employed persons

This section outlines:

- the roles and responsibilities of officers at the visa office in processing applications, selecting, and counselling applicants in the entrepreneur and self-employed categories;
- the roles and responsibilities of provincial and territorial officials with respect to applicants in the entrepreneur and self-employed categories.

#### Officer roles and responsibilities at visa offices with respect to entrepreneurs

Individual or group	Responsibility	Comments
Officer at visa offices abroad	Determine whether potential entrepreneurs meet the definition set out in R88.	If yes, the applicant is "eligible" and assessment for admissibility may proceed
	Assess the applicant's admissibility in the entrepreneur category.	
	Provide counselling, as operational	Officer may:

	exigencies permit, on the program.	<ul style="list-style-type: none"> <li>• provide information about the conditions imposed on all entrepreneurs;</li> <li>• recommend exploratory visits to Canada;</li> <li>• refer the client to useful contacts both abroad and in Canada.</li> </ul>
	Issue visas to the applicant and family members who meet the selection criteria and the statutory requirements.	
	Explain the conditions of permanent residence imposed on all entrepreneurs and their family members.	
	Provide the entrepreneur with information related to the permanent residence and monitoring process.	<p>This information may include:</p> <ul style="list-style-type: none"> <li>• the <i>Monitoring and Counselling Guide</i> which provides details on the reporting requirements;</li> <li>• a mail-in card used for the first reporting period;</li> <li>• the form to cancel conditions; and</li> <li>• a list of federal and provincial business immigrant contacts who can help the entrepreneur comply with conditions.</li> </ul>

**Officer roles and responsibilities at visa offices with respect to self-employed candidates**

<b>Individual or group</b>	<b>Responsibility</b>	<b>Comments</b>
Officer at missions abroad	Determine whether applicants in the self-employed category meet the definition set out in R88.	If yes, the applicant is "eligible" and assessment for admissibility may proceed.
	Assess the applicant's admissibility in the self-employed category.	
	Issue visas to the applicant and family members who meet the selection criteria and the statutory requirements.	

**7.3. Roles played by provincial and territorial officials (excluding Quebec)**

The federal, provincial and territorial governments all encourage prospective business immigrants to invest in Canada. In recognition of the important role provinces play in the business immigration program, adaptability points are awarded for exploratory visits and participation in federal-provincial business immigration initiatives.

<b>Individual or group</b>	<b>Role</b>	<b>Comments</b>
Provinces and territories:	Designate officials who specialize in the entrepreneur program	Some provinces and territories wish to become involved with entrepreneurs prior to their application. Others do so from the point of application onward. Still others are primarily interested in assisting entrepreneurs once they have

		become permanent residents.
	Arrange activities in Canada to assist entrepreneurs before or after becoming permanent residents.	
	Respond to written inquiries from potential applicants.	
	Offer seminars or counselling sessions.	
	Engage in various promotion and marketing activities.	
	Send officers abroad to recruit applicants and provide information about doing business in Canada.	
	Review proposals if requested by applicant	While not considered in the selection process, business proposals may be presented to provincial officials for comment.
	Monitor performance.	
Some provinces and territories may	Prefer more limited contacts with the visa office.	They may be likely to communicate with visa offices only on high priority or urgent cases. They may wish to review only contentious, questionable or high profile cases.
Provincial and territorial officials may	Provide various services once permanent residence has been granted.	These services may include: <ul style="list-style-type: none"> <li>• providing counselling and assistance to entrepreneurs in setting up their businesses after they have become permanent residents;</li> <li>• assisting in the monitoring of entrepreneurs;</li> <li>• providing their views to inland officials about the value of an entrepreneur's investment in Canada, its economic contribution or other aspects of compliance with the conditions.</li> </ul>

**7.4. Roles and responsibilities in processing Quebec cases**

The province of Quebec has signed an agreement with the federal government pursuant to A8, and A9, under which it has the right to select its own foreign nationals who intend to reside in that province as permanent residents. All these persons are therefore selected pursuant to the *Canada- Quebec Accord on Immigration*.

Individual or group	Responsibility	Comments
Quebec officials	are responsible for the selection of entrepreneurs intending to settle in Quebec.	Immigration is a shared jurisdiction under the <i>Constitution Act</i> . Quebec under the Accord can select entrepreneurs.
Federal officials	evaluate inadmissibility (A33-A41); issue visas; grant permanent residence. impose conditions;	While Quebec can impose conditions and determine compliance, federal officials perform these functions.



	determine compliance with conditions; carry out enforcement action.	
Federal officials and Quebec officials	may chose to work together, on occasion, to monitor entrepreneurs in Quebec.	This understanding is between la <i>Direction de l'aide à l'immigration d'affaires (DAIA) du ministère des Affaires internationales, de l'Immigration et des Communautés culturelles (MAI/CCQ)</i> and CIC Regional office in Montreal. The final decision concerning compliance remains with the federal government.

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## 8. Processing entrepreneurs

Operational pressures have limited the opportunity to provide counselling.

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### 8.1. Pre-application counselling

Ideally, and as exigencies permit, officers may provide information to the prospective entrepreneur prior to receiving the application. The officer could for example:

- discuss with the applicant the possibility of an exploratory visit to Canada; and
- ensure the applicant has all the documentation required.

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### 8.2. Encouraging exploratory visits

The *Immigration and Refugee Protection Act* encourages investors and entrepreneurs to make exploratory visits to Canada and grants assessment points for doing so.

Officers, when time allows, and when appropriate, could:

- encourage prospective entrepreneurs to make an exploratory visit to Canada before applying for permanent residence. The visit gives the applicant the opportunity to acquire first-hand knowledge about living and doing business in Canada;
- inform the applicant that the provinces and territories strongly encourage this practice. Some provide services to potential entrepreneurs at this time, such as information seminars or individual consultations;
- encourage the applicant to contact provincial officials well in advance of any exploratory visit, to obtain information on services available.

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**Note:** Officers must also take into account the *bona fides* of the applicant when encouraging the individual to undertake an exploratory visit to Canada.

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### 8.3. Ensuring that the applicant has all the necessary documentation to make the application

Officers should ensure that:

- in addition to the usual counselling material, the information package given to a prospective applicant includes clear information on what supporting documentation will be needed to assess an applicant's ability to meet the definition of an entrepreneur.

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**Note:** Schedule 6 is the attachment to the IMM 0008EGEN that provides an overview of an applicant's financial picture.

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**8.4. Assessing eligibility: selection criteria**

To be approved as an entrepreneur, the applicant must:

- meet the regulatory definition of an entrepreneur; and
- meet the selection criteria for the entrepreneur class.

This section outlines the elements an officer must consider to determine whether the regulatory definition of "entrepreneur" is met.

R97(2) mandates the refusal of any application where the applicant does not meet the regulatory definition of "entrepreneur". If it is clear that an applicant does not meet the definition, no further analysis is required.

**8.5. Does the applicant meet the regulatory definition of "entrepreneur"?**

The officer must determine whether the applicant meets the regulatory definition, which consists of three distinct criteria. Unless selected by a province, the entrepreneur must:

1. have business experience;
2. have a legally obtained minimum net worth of \$300,000; and
3. provide a written statement to an officer that they intend and will be able to meet the conditions referred to in subsections R98(1) to (5).

**8.6. What is "business experience"?**

The Regulations set out three clear criteria which must be met for the applicant's business experience to be satisfactory to an officer:

- qualifying business;
- time;
- role.

**8.7. What is a "qualifying business"?**

"Business experience" must have taken place in a "qualifying business," defined as a business:

- which is not a business for deriving investment income (interest, dividend, or capital gains); and
- for which documentary evidence of the applicant's participation in the business must be provided for at least two of the following attributes:

**Business participation attributes**

ATTRIBUTE		Multiplied by:	Equal or greater than
1	Percentage of equity	Full-time job equivalents	2 full-time job equivalents
2	Percentage of equity	Total annual sales(\$)	\$ 500,000
3	Percentage of equity	Annual net income(\$)	\$ 50,000
4	Percentage of equity	Net assets	\$ 125,000

R89 refers to "artificial transactions" which are not acceptable. An artificial transaction is considered to be any transaction designed to ensure compliance with program requirements,

unless the transaction may reasonably be considered to have been undertaken for bona fide purposes other than to obtain such compliance; for example, a change in corporate structure when the primary purpose is to meet the qualifying business definition.

In the past, officers were instructed to assess each business in which an applicant holds a percentage of equity, and if no **single** business could satisfy the requirements, then the definition of “qualifying business” was deemed to have not been met.

However, in *Thomas v. MCI* (FCC 2006), the judge held that visa officers commit a reviewable error when they fail to consider the **aggregate** financial result from all of an applicant's businesses.

Therefore, when assessing an Entrepreneur or Investor applicant’s “business experience,” where applicable, visa officers should consider the **aggregate** financial information of more than one business. This can be done using the same calculation—the percentage of equity held by the applicant/spouse multiplied by the variables concerned (annual sales, net income, full-time equivalents and net assets). However, when determining whether the applicant has managed a “qualifying business,” the sum of these calculations for all businesses will be the figure compared against the minimum thresholds found in R88(1).

It is anticipated that the majority of Investor and Entrepreneur applicants will rely on a single business or, in the case of Investor applicants, choose to declare management experience in order to demonstrate “business experience.”

Given the potential workload implications, such aggregate assessments should be made only where they are clearly relevant to the selection decision, such as a decision to refuse the applicant.

Example:

An applicant owns a percentage of equity in three businesses with the following characteristics:

	<i>Company A</i>	Applicant's Share	<i>Company B</i>	Applicant's Share	<i>Company C</i>	Applicant's Share	Total: (A) + (B) + (C)	Minimum Required by R88(1)	Min. Met?
<b>% of Equity</b>	33%		50%		25%				
<b>Sales</b>	\$ 75,000	\$ 24,750	\$200,000	\$ 100,000	\$500,000	\$ 125,000	\$249,750	\$ 250,000	X
<b>Net Assets</b>	\$ 56,000	\$ 18,480	\$125,000	\$ 62,500	\$250,000	\$ 62,500	\$143,480	\$ 125,000	√
<b>Net Income</b>	\$ 12,000	\$ 3,960	\$ 45,000	\$ 22,500	\$ 50,000	\$ 12,500	\$ 38,960	\$ 50,000	X
<b>FTEs</b>	3	1	4	2	4	1	4	2	√

As this example illustrates, the definition of “qualifying business” is not successfully met by any one business on its own. However, when one considers the aggregate total for the applicant’s share of sales, net assets, net income and full-time equivalents in all three businesses, the definition **is** met.

**8.8. What role must the entrepreneur have played?**

The entrepreneur’s role in the business must have been management and control of a percentage of the equity of the qualifying business according to the following table (the entrepreneur must provide documentary evidence for at least two attributes out of four):

**Percentage of equity in a qualifying business**

ATTRIBUTE	% OF EQUITY		
	100 %	50 %	33.33 %
Employment	2	4	6
Total annual sales (\$)	500,000	1,000,000	1,500,000
Annual net income(\$)	50,000	100,000	150,000
Net assets at yearend	125,000	250,000	375,000

**8.9. Calculating percentage of equity for Entrepreneur applicants**

In order to determine the percentage of equity controlled by an Entrepreneur applicant (and their spouse, where applicable) it may be necessary to look beyond the legal, or de jure, control of the shares in the qualifying business.

In certain circumstances legal control of a portion of the qualifying business' equity may rest with another individual—but may still be considered part of the applicant's percentage of equity. For example, in jurisdictions where the law precludes non-citizens from legally controlling a majority interest in a business, other documents may exist, such as trust or licensing agreements, that better reflect the effective or de facto control of the business.

In many of the Gulf States, non-citizen applicants legally own 49% of the capital stock of a corporation, with agreements stipulating full control over the assets, obligations and profits of the corporation in return for a small licensing fee to the Gulf national or 51% shareholder. In such a scenario, the equity percentage for the "qualifying business" calculation would be 100%.

Where there are serious concerns that such documents or agreements were produced **solely** for the purposes of satisfying Immigration requirements, an officer must be satisfied that the applicant has not engaged in an artificial transaction [R89]. However, these agreements should always be considered within the local context, as the legal environment in certain countries can make them a necessity for a non-citizen operating a business.

**8.10. What is the time factor?**

For the applicant's business experience to count, it must have been accumulated in one-year periods during the period beginning five years before the date of application and ending when a determination is made.

**8.11. Other aspects of the regulatory definition to consider when assessing the eligibility of an entrepreneur**

The applicant must provide a written statement to an officer that for a period of at least one year and within three years of becoming a permanent resident, the entrepreneur intends and is able to:

- control a percentage of the equity of a qualifying Canadian business equal to or greater than 33.3%;
- provide active and ongoing management of the qualifying Canadian business; and
- create at least one incremental full-time job equivalent in that business for Canadian citizens or permanent residents, other than the entrepreneur and their family members.

**8.12. Controlling a percentage of the equity of a qualifying Canadian business equal to or greater than 33.3%**

The entrepreneur, once in Canada, is required to control at least 1/3 of a qualifying Canadian business (see R88) in Canada.

The entrepreneur must hold a clearly defined degree of control in the business as the table below sets forth:

**Percentage of equity in a qualifying business**

ATTRIBUTE	% OF EQUITY		
	100 %	50 %	33.33 %
Employment	2	4	6
Total annual sales (\$)	250,000	500,000	750,000
Annual net income(\$)	25,000	50,000	75,000
Net assets at yearend	125,000	250,000	375,000

**8.13. Counselling applicants as to conditions of permanent residence and qualifying Canadian business**

Officers should keep in mind the following when describing the conditions of permanent residence to applicants.

In order to satisfy the requirement of active and on-going participation in the management of the business, the entrepreneur must demonstrate input into management decisions through involvement in the operations of the business on a continuing basis.

CIC Business Centres will consider the following points when making their assessment:

- each case should be judged on its own merits. It should be noted that it is not required that the entrepreneur be present each and every day;
- artificial transactions as described in R89 and referenced in Section 8.7 above are not acceptable;
- passive investment in real estate, bonds or other securities, or other investments made primarily with the hope of capital appreciation, would not satisfy the requirement of qualifying Canadian business;
- an entrepreneur who enters into franchise agreements or into partnership agreements with other entrepreneurs must meet all the provisions of the program, including the guidelines defining the minimum degree of control over a qualifying Canadian business and active and ongoing management. An arrangement where one partner funds a partnership and another provides the business expertise would not be satisfactory.
- a review of jurisprudence has established that a professional practice constitutes "a business." It does not matter whether or not the professional devotes more time to providing services to clients than to managing the practice. Such persons will, of course, have to show that they have created at least one full-time job equivalent in Canada through their company in order to have conditions removed.

**8.14. Creating at least one incremental full-time job equivalent in the qualifying Canadian business**

An entrepreneur must create at least one incremental full-time job equivalent for one or more Canadian citizens or permanent residents, other than the entrepreneur and their family members. The entrepreneur must meet the above conditions for a period of at least one year within a three-year period after becoming a permanent resident.

Retaining the services of accountants, lawyers, or business consultants on a fee-for-service basis does not create employer-employee relationships.

**8.15. Making the eligibility decision**

Based on a review of the above elements of the application, the officer will either:

- determine that the applicant is not eligible and refuse the case; or
- determine that the applicant meets the regulatory definition and proceed to examine the case according to the selection criteria.

**8.16. Assessing eligibility: selection criteria**

This section outlines the procedures an officer must follow in assessing an applicant against the selection criteria for entrepreneurs, once the regulatory definition has been satisfied.

The officer must assess the applicant against the selection criteria for entrepreneurs by examining the applicant's business and financial background. The IRPA provides an extensive tool set to officers to ensure program integrity. A16(1) obliges applicants to answer truthfully and A40 deals with misrepresentation. A36 and A37 respond to criminality.

**8.17. Applying the selection criteria for entrepreneurs**

If an officer is satisfied that the applicant meets the regulatory definition of “entrepreneur,” the applicant is assessed on a selection grid. The applicant will require 35 points out of a maximum of 100 available, as determined by the Minister.

The following grid outlines the criteria against which to assess the applicant and the points to be awarded:

**ENTREPRENEURS: Selection factors and maximum points**

<b>BUSINESS EXPERIENCE*</b>	<b>Maximum 35</b>
Five years' business experience	35
Four years' business experience	30
Three years' business experience	25
Two years' business experience	20
* within five years preceding date of application. Any additional experience gained in the period prior to a selection decision is to be counted.	

<b>AGE</b>	<b>Maximum 10</b>
21 to 49 years of age at time of application	10
Less 2 points for each year of age over 49 years or under 21 years	

<b>EDUCATION</b>	<b>Maximum 25</b>
(Doctorate <b>OR</b> Master's Degree) + 17 years of full-time or full-time equivalent studies	25
(3-year Trade Certificate <b>OR</b> LLB or Medical Degree)+ 15 years of full-time or fulltime equivalent studies	22

(Bachelor's Degree <b>OR</b> 2-year Trade Certificate) + 14 years of full-time or full-time equivalent studies	20
(Bachelor's Degree or 1-year Trade Certificate) + 13 years of full-time or full-time equivalent studies	15
1 year post-secondary + 12 years full-time or full-time equivalent studies	12
Secondary school education	5

<b>OFFICIAL LANGUAGES</b>	<b>1st Language</b>	<b>2nd Language</b>	<b>Maximum 24</b>
High proficiency	16	8	
Moderate proficiency	8	8	
Basic proficiency	2	2	
No proficiency	0	0	

<b>ADAPTABILITY</b>	<b>Maximum 6</b>
Business exploration trip to Canada within 5 years of application	6
Participation in designated joint federal-provincial business immigration initiatives	6

<b>TOTAL</b>	<b>Maximum 100</b>
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This point system does not apply to persons who are selected under the Quebec program. Under the terms of the *Canada-Quebec Accord*, Quebec selects its own business immigrants.

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**Note:** Adaptability points require that the province of destination provide the applicant with documentation indicating that one or both of the elements have been met.

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**8.18. Substitution of evaluation**

R109 applies if, in the officer's opinion, there are good reasons why the points awarded do not reflect the chances of the foreign national and their family members becoming economically established in Canada. Substitution of evaluation (positive or negative discretion) may be used for economic reasons, i.e., involving the ability to support oneself. The officer must under R109(2) obtain the concurrence of a second officer. In 1995, the Supreme Court confirmed that this discretionary authority is restricted to successful establishment in the economic sense.

**8.19. Documentation and provenance of funds concerns**

Business immigrants require a net worth as well as business experience. Officers have authority to require evidence to establish an applicant's admissibility and the power to reject an applicant for failing to discharge the obligation.

A16(1) imposes the obligation on applicants "to answer truthfully" and "produce ... all relevant evidence and documents" reasonably required by the officer. A11(1) requires that a visa may only be granted if the officer "is satisfied that the foreign national is not inadmissible and meets the requirements of the Act."

The IRPA provides broad grounds to reject applicants. A40(1)(a) provides for the rejection of applicants for misrepresentation of a material fact, namely "for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act." A41(a) provides officers authority to find applicants inadmissible for "an act or omission which contravenes directly or indirectly a provision of this Act." The IRPA provides officers with the tools to reasonably require evidence to establish admissibility A16(1); to refuse the applicant when not satisfied as they are not inadmissible A11(1); or to refuse when provided with false material information relating, among other things, to control and ownership of the business and net worth A40(1)(a). Similarly, officers may refuse applicants under A41 for any act or omission.

A common practice of organized crime is to present a legally sound business as a front for criminal activity. The Regulations ensure officers can go beyond the specific requirements of the qualifying business and net worth to examine their context. This can be achieved by obliging applicants to establish the legality of their assets. In this manner officers can reasonably require evidence to establish the legality of assets and can refuse applicants who do not comply A16(1), do not meet the presumption A11(1), or who purposely dissemble A40(1)(a). This is achieved by requiring that entrepreneurs' and investors' "net worth be legally obtained."

The risks of applying a "legally obtained" provision poorly and inaccurately can lead to poor case decisions and jurisprudence. Its successful use places a significant evidentiary burden on the officer. A legally sustainable refusal will also have to deal with issues of defining both "legal" and "obtained." To meet the policy objective, the provision for legally obtained net worth provides a context to examine the provenance of funds that can support sustainable rejections under A11.

**Providing a regulatory obligation for business applicants to establish the legality of their net worth:**

- provides clear rules and expectations for clients and officials;
- serves as a deterrent;
- provides the legal context for officers to examine the provenance of funds of business immigrants and to make legally sustainable refusals.

**Relevant documents include:**

- personal net worth statement;
- business balance sheet;
- business financial statements;
- corporate employee payroll.

These documents provide an accounting of the applicant's assets and liabilities and help the officer to determine whether the applicant has the required business experience. They are discussed in the following sections.

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**8.20. Personal net worth statement**

The Regulations set out a requirement for a legally obtained minimum net worth of \$300,000, although there is no requirement for a minimum amount to be transferred to Canada.

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**8.21. What should be included in a personal net worth statement**

A personal worth statement is included in form IMM 0008Esch6.

The personal net worth statement includes both business and personal assets and liabilities of the applicant as well as those of the spouse or common-law /conjugal partner.

**Officers should:**

- review this document to satisfy themselves as to the completeness, valuation, ownership, existence and presentation of the component assets and liabilities;
- require applicants to provide documentation to support the value of assets referred to on this statement (bank statements, property valuations, etc.);



- ◆ funds may be in non-convertible currencies;
- ◆ exchange controls may restrict movement of capital to Canada;

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**8.22. Business balance sheet and business income statement (financial statements)**

For the purposes of assessing the applicant, the most important statements are the balance sheet and income statement.

**Officers should:**

- consider the performance of the business over time. Financial statements for the previous five years should be provided for comparative purposes and to demonstrate that the applicant met the entrepreneur definition in at least two of the previous five years.
- review the income statement to verify the completeness, measurement, occurrence and presentation of the component revenue and expenses;
- when reviewing the income statement, keep in mind that it is based on transactions. Particularly in the case of a small enterprise, it is advisable to look at the individual components and not simply the net income.

For example, business valuers "normalize" income by considering how much has been expended by the owner in salaries and how much would be a reasonable salary to pay an employee to do the same job. An owner may not charge any salary at all and as a consequence may show considerable net income or alternatively allocate a large amount to salary expenses and show very little net income or even a loss for tax purposes. It would therefore be in order to inquire as to the number of employees and the amount of salary expenses which can be attributed to the owner.

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**8.23. Integrity of financial statements**

Officers must carefully consider the integrity of the financial statements provided.

In Canada, there are essentially three levels of assurance that a public accountant can provide to the users of financial information:

- audits;
- review engagements; and
- compilation engagements.

The majority of small companies or companies that do not have to report to a bank or other creditors will just get a compilation when they get their tax returns professionally prepared.

Most countries have a similar range of reporting requirements. In particular, if there has been a British influence in the past (i.e., Hong Kong), the standards will be very close to ours.

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**8.24. When the veracity of the documentation is in doubt**

The officer should:

- first request further documentation. In the absence of suspicious circumstances, it will ordinarily be appropriate to accept financial statements which have been reported on by a reputable external accountant. Most small businesses are extremely unlikely to have been audited;

- only as a last resort, request an additional third-party verification. It should be requested only if:
  - ◆ it has credibility in the applicant's home jurisdiction; and
  - ◆ its submission could cause you to approve an application which would otherwise be refused. Obtaining third-party verification would be at the applicant's discretion if they choose to pursue this option rather than be refused for failure to prove that they meet the definition of entrepreneur.

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### 8.25. Reviewing other documentation

Officers should review other supporting documentation as necessary. This documentation may include:

- corporate income tax returns;
- personal income tax returns;
- minute books;
- share certificates;
- municipal permits, business licenses, etc.;
- payroll lists;
- sales taxes;
- property deeds, land registrations, appraisals, etc.;
- general ledger, cash book or bank statements.

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### 8.26. Corporate income tax returns

Officers may examine tax returns including information on:

- owners and directors;
- related parties;
- profit for income tax purposes;
- duration of operations.

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**Note:** Net income (per the financial statements) and taxable income (per the tax return) will differ as a consequence of the different treatment of certain items such as depreciation. However, there should be a reconciliation to explain the difference. It would certainly be cause for concern if it appears that different information is being presented for the purposes of financial statements and tax reporting (two sets of books).

**Note:** Inability to produce tax records would be a cause for concern, as would a pattern of insufficient profit to at least provide for the cost of living of the applicant and their family members.

**Note:** The officer has the authority under section A16(1) to request all relevant evidence and documents that they reasonably require to assist them in making a selection decision.

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**8.27. Personal income tax returns**

Officers may wish to review:

- proprietor's profit and loss;
- supporting financial statements.

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**8.28. Minute books**

Officers may also review:

- shareholders' register;
- shareholders' resolutions;
- minutes of meetings;
- articles of incorporation.

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**8.29. Share certificates**

A review of share certificates may also provide:

- indication of ownership.

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**8.30. Municipal permits, business licences, etc.**

Officers may wish to review municipal permits, business licences and other similar documentation that should show the type of business organization.

Most business undertakings are conducted either as proprietorships, partnerships or corporations (legal entities organized for specific purposes with limited liability).

As a general rule, most small businesses start as proprietorships or partnerships and evolve into corporations as the level of business activity expands.

Most businesses must be registered or licensed. The business registration certificate shows in whose name a business is registered. Though it may not indicate who owns or operates the business, it may give the business address and indicate whether the business is a sole proprietorship, a partnership or a corporation.

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**8.31. Payroll records**

With rare exceptions, payroll records are essential when determining eligibility for this class of applicants.

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**8.32. Sales taxes and property deeds, land registrations, appraisals, etc.**

**Officers may:**

- request a one-year record of bank deposits to verify their long-term ownership;
- request property deeds or bank letters to verify ownership of property or stocks, amounts of outstanding mortgages and banking facilities used.

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**Note:** Property appraisals are an extra expense to the applicant and should only be requested if the property value given by the applicant is questionable and this assessment is critical to total net worth.

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**8.33. General ledger, cash book or bank statements**

Officers may request supporting accounting records in some circumstances.

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**8.34. Refusal of an entrepreneur application**

An applicant must be refused on failure to meet the entrepreneur definition described in R88 for some of the following reasons:

- the applicant lacks “business experience” because of the two-year qualifying standard;
- the business does not meet the definition of “qualifying business;”
- the applicant does not meet the legally obtained minimum net worth standard;
- the applicant refuses to provide a written statement that they intend and have the ability to meet the conditions referred to in subsection R98(1) to (5).

An applicant described in any of the inadmissibility sections will be refused.

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**Note:** A person who applies as a business immigrant is assessed in that class and accepted or refused based on that assessment. Officers are not required to assess a failed business applicant as a skilled worker nor in another business class.

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**8.35. Refusal letter**

The refusal letter must clearly state all the reasons for refusal in detail. Where information is later presented that should have been disclosed at interview and might have at that time led to a positive decision, the officer should invite the applicant (in the absence of special circumstances) to submit a new application and pay a new cost recovery fee.

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**8.36. Making the admissibility decision**

If the applicant meets selection criteria and is not otherwise inadmissible, the visa office will proceed to issue the visa.

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**8.37. Allowing early entry: issuing a temporary resident permit**

If a person's presence in Canada is urgently required prior to the finalization of the admission procedures, the officer may issue a temporary resident permit. Officers should remember that:

- the urgency of the applicant's presence should relate to the creation or possible loss of jobs for Canadian citizens or permanent residents;
- a permit should only be issued if they are satisfied that the person has both the intent and the ability to comply with all the requirements of the entrepreneur program and is unlikely to be inadmissible;
- the permit should be issued only for the period required. Unless there are reasons to preclude repeat trips to Canada within the validity of the permit, it should indicate “authorized to leave and re-enter Canada;”
- in cases where provincial officials wish to provide input, officers should obtain their views before deciding to issue a permit. Officers should also consult these officials before deciding to renew a permit.

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## 9. Issuing the visa

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### 9.1. Applying conditions

Conditions are imposed as they are seen by provincial partners to compel economic activity, encourage business immigrants to use counselling services provided by the provinces and, finally, allow CIC to track the economic impact of the program.

The imposition of conditions is part of the selection process and, is included in the definition. The written statement that is provided by the applicants represents an acknowledgment that they intend and have the ability to meet the conditions described in R98(1) to (5).

The statement that is signed by the applicant needs to reference the conditions in R98(1) to (5). Those sections also identify the applicable time entrepreneurs have to meet conditions and the requirement to provide evidence of efforts to comply.

Finally, R98(6) states that family members are subject to the condition that the entrepreneur meets the conditions.

The statement ensures that the entrepreneur fully understands and accepts the requirements.

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**Note:** There is a technical requirement to code the permanent resident document indicating that conditions have been imposed. The code is 74.

**Note:** Should the permanent resident document holder also be subject to medical surveillance the code is 75.

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### 9.2. Providing appropriate counselling documentation

Officers should:

- include one copy of the *Entrepreneur Counselling and Monitoring Guide* with the visa of each principal applicant;
- attach to the guide or to the Confirmation of Permanent Resident form (IMM 5509B) a copy of the signed written statement;

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**Note:** The guide also contains the mail-in card required to satisfy the first reporting requirement. It provides the list of regional business immigration coordinators where the entrepreneur must send their mail-in card within six months from the date they received permanent resident status.

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- provide other useful material such as the list of provincial business contacts.

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**Note:** CAIPS automatically generates and prints the appropriate code and text for EN cases. However, CAIPS does not automatically generate the written statement.

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### 9.3. Completing other key sections of the immigration visa

Officers should ensure that a complete Canadian address is included on the IMM 5509B (Confirmation of Permanent Residence). If necessary, request the entrepreneur to provide a contact address in Canada for a friend, relative, lawyer, consultant, accountant or bank manager. This will assist inland offices in tracing the entrepreneur in cases where no mailing card is received.

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### 9.4. Advising applicants of port of entry procedures

The officer at the port of entry is authorized to grant the right of permanent residence.

The port of entry officer will, in the course of granting the right of permanent residence, suggest to the entrepreneur that he contact provincial authorities and remind the entrepreneur of the conditions that have been imposed at the visa office.

The port of entry officer will also remind the applicant that under R98(6) family members of an entrepreneur are subject to the condition that the entrepreneur meets the conditions.

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## **10. Entrepreneurs Destined to Quebec**

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### **10.1. Selection for Quebec**

Entrepreneurs destined to Quebec are selected by Quebec immigration officials and must obtain a Quebec certificate of selection (CSQ) before a federal officer may consider their application.

If there are no indications of inadmissibility or concerns as to documentation, the interview may be waived.

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### **10.2. Conditions**

A9(1)(d) authorizes the province of Quebec to impose conditions on entrepreneurs. R98(2) requires that the written statement signed by the entrepreneur refer to those conditions

The province of Quebec implemented a separate set of conditions for Quebec-selected entrepreneurs on October 16, 2006. An entrepreneur issued a CSQ on or after this date must respect the conditions set out by the province of Quebec. Quebec-selected entrepreneurs issued a CSQ prior to October 16, 2006 must respect the conditions set out in R98(1)–(5).

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### **10.3. Monitoring in Quebec**

Once the entrepreneur arrives in Quebec, the requirement to report and provide evidence of efforts to comply will be managed by federal officials at CIC, as per R98.

Please see Appendix A for a sample letter that can serve as a model.

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## **11. Processing self-employed persons**

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### **11.1. Assessing eligibility: selection criteria**

In order to be eligible for consideration in the self-employed category, the applicant must first meet the regulatory definition. Most applicants are selected or refused because they meet, or fail to meet, the definition.

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### **11.2. Does the applicant meet the definition of "self-employed"?**

The self-employed applicant is one who:

- has relevant experience; and
- has the intention and ability to be self-employed in Canada; and
- intends to make a significant contribution in specified economic activities as defined in the Regulations through either:
  - ◆ self-employment in cultural activities

- ◆ self employment in athletics, or;
- ◆ self employment in the purchase and management of a farm.

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### 11.3. Determining experience, intention and ability

The officer must consider the following in assessing an applicant's experience, intent and ability to create their own employment in Canada:

- Self-employed experience in cultural activities or athletics. This will capture those traditionally applying in this category. For example, music teachers, painters, illustrators, film makers, freelance journalists. Beyond that, the category is intended to capture those people who work behind the scenes, for example, choreographers, set designers, coaches and trainers.
- Management experience in the world of arts and culture may also be a viable measure of self-employment; for example, theatrical or musical directors and impresarios.
- A person's financial assets may also be a measure of intent and ability to establish economically in Canada. There is no minimum investment level for a self-employed person. The capital required depends on the nature of the work. Applicants must have sufficient funds to create an employment opportunity for themselves and maintain themselves and their family members. They must show you that they have been able to support themselves and their family through their talents and would be likely to continue to do so in Canada. This includes the ability to be self-supporting until the self-employment has been created.
- Participation at a world-class level in cultural activities or athletics intends to capture performers. This describes those who perform in the arts, and in the world of sport. "World class" identifies persons who are known internationally. It also identifies persons who may not be known internationally but perform at the highest levels in their discipline.
- It is important, when determining an applicant's intent and ability to purchase and manage a farm, to be aware that farming is a highly skilled and capital-intensive industry with real estate making up 54% of an average farmer's assets. The Canadian Federation of Agriculture (CFA) reports that in Canada the average value of farmland varies significantly from province to province but ranges from \$330 to \$4,600 per acre. Farmland closest to urban centres has a higher market price. Average farm size varies from province to province with Newfoundland reporting an average farm size of 146 acres while Saskatchewan reports an average farm size of 1,152 acres.

In the 1996 census, 98% of farms are family-operated businesses. The CFA advises that "more than ever before, the successful Canadian farmer must be adaptable to the different requirements of running a farm business. The farmer must be able to recognise an animal that is ill, fix a malfunctioning combine and finish off the day by hooking up to the Internet to check the state of the world markets."

Farming has become a business that requires, in addition to more traditional agricultural skills, a working knowledge of computers and other high-tech equipment. According to the 1996 census, more than 21% of Canadian farm households own one or more computers. There is also a trend to higher education in the farm community.

In other words, the successful applicant must meet a rigorous threshold: sufficient capital, appropriate experience and appropriate skills.

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### 11.4. Making a significant contribution to cultural or artistic life or to athletics

It is intended that the self-employed class enrich Canadian culture and sports. In other words, when applicants meet the test of experience, intent and ability and there is a reasonable

expectation they will be self-employed in culture or sport, the test of significant contribution becomes relative. For example, a music teacher destined to a small town can be considered significant at the local level. Likewise, a freelance journalist who contributes to a Canadian publication will meet the test. In the end, the definition of “significant contribution” is left to the discretion of the officer, but is not intended to bar qualified self-employed persons who are applying in good faith. Its inclusion in the definition is intended to bar frivolous applications.

**Note:** If an applicant does not meet the regulatory definition of a self-employed person, R100(2) mandates the refusal of the application without further assessment.

**11.5. Assessing admissibility**

If the officer is satisfied that an applicant meets the regulatory definition of a self-employed person, the officer will assess the applicant against the point system for the self-employed class.

Officers will evaluate an applicant's admissibility using the following grid. A self-employed applicant requires at least 35 units of assessment for approval of an application, out of a possible total of 100.

**SELF-EMPLOYED PERSONS: Selection factors and maximum points**

<b>RELEVANT EXPERIENCE*</b>	<b>Maximum 35</b>
Five years' relevant experience	35
Four years' relevant experience	30
Three years' relevant experience	25
Two years' relevant experience	20
* within five years preceding the date of application. Experience gained prior to the selection decision is also counted.	

<b>AGE</b>	<b>Maximum 10</b>
21 to 49 years of age, at time of application	10
<b>Less 2 points for each year of age over 49 years or under 21 years</b>	

<b>EDUCATION</b>	<b>Maximum 25</b>
(Doctorate <b>OR</b> Master's Degree) + 17 years' full-time or full-time equivalent studies	25
(3-year Trade Certificate <b>OR</b> LLB or Medical Degree)+ 15 years' full-time or fulltime equivalent studies	22
(Bachelor's Degree <b>OR</b> 2-year Trade Certificate) + 14 years' full-time or full- time equivalent studies	20
(Bachelor's Degree or 1-year Trade Certificate) + 13 years' full-time or full-time equivalent studies	15
1 year post-secondary + 12 years' full-time or full-time equivalent studies	12
Secondary school education	5

<b>OFFICIAL LANGUAGES</b>	<b>1st Language</b>	<b>2nd Language</b>	<b>Maximum 24</b>
High proficiency	16	8	
Moderate proficiency	8	8	
Basic proficiency	2	2	
No proficiency	0	0	

<b>ADAPTABILITY</b>	<b>Maximum 6</b>
Spouse's or common-law partner's education	3 - 5
Minimum one year's full-time authorized work in Canada*	5
Minimum two years' full-time post-secondary studies in Canada*	5



Family member in Canada	5
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<b>TOTAL</b>	<b>Maximum 100</b>
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\*Applies to either principal applicant or spouse or common-law partner.

**Note:** This point system does not apply to persons who are selected under the Quebec program. Under the terms of the *Canada-Quebec Accord*, Quebec selects its own business immigrants.

**11.6. Substitution of evaluation**

Pursuant to R109(1), an officer may issue or refuse a visa regardless of the points obtained if, in their opinion, the points awarded do not reflect the chances of the foreign national becoming economically established in Canada. The officer must obtain the concurrence of a second officer R109(2).

**11.7. Requesting and reviewing documentation**

Documentation should provide evidence of the applicant's financial position and previous self-employment or experience. It should provide reasonable evidence that the applicant merits consideration under the program.

Officers may request that self-employed applicants show evidence of having researched the Canadian labour market and adopted a realistic plan that would reasonably be expected to lead to self-employment.

However, a formal business plan that would entail unnecessary expense and administrative burden is discouraged.

**11.8. Processing self-employed applicants destined for Quebec**

As for entrepreneurs, Quebec immigration officials are responsible for the selection of self-employed persons destined to Quebec.

**11.9. Making the eligibility decision**

After assessing the applicant's eligibility, the officer will either:

- determine that the applicant does not meet the regulatory definition and refuse the application; or
- decide that the applicant is eligible as a self-employed person and proceed to assess admissibility.

**Note:** There are no provisions in the Regulations to impose conditions on self-employed applicants.

**11.10. Refusal of self-employed applicants**

Self-employed applicants are most often refused pursuant to R100(2) as they do not meet the minimal requirements.

The prohibitions as described in the inadmissible section of the IRPA apply in the normal way.

A person who applies as a self-employed person should be assessed in that category and accepted or refused based on that assessment. An officer is not required to assess a failed business applicant in another category, and, in fact, the applicant cannot change categories once the application has been opened.

**11.11. Refusal letter**

The refusal letter must clearly state all the reasons for refusal in detail. A sample refusal letter is provided for general guidance.

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**11.12. Making the admissibility decision**

If the applicant meets selection criteria and is otherwise admissible, the visa office will proceed to issue the visa.

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**11.13. Monitoring**

File retention and disposal requirements differ slightly from those for entrepreneurs. The records of successful self-employed persons must be retained for two years from the date of visa issuance (as opposed to three years for entrepreneurs).

There is currently no system in place to monitor self-employed persons in Canada.

**Appendix A** Entrepreneur's letter of acknowledgment

To Canadian Embassy/High Commission/Consulate in

(Name of Country)

Reference: File No. B –

I (name of entrepreneur) have applied for a permanent resident visa as a member of the entrepreneur class.

I intend and have the ability to meet the conditions referred to in section R98, namely, that after I become a permanent resident of Canada, I must:

(a) control a percentage of equity of a qualifying Canadian business equal to or greater than 33 1/3%;

(b) provide active and ongoing management of the qualifying Canadian business;

(c) create at least one incremental full-time job equivalent for Canadian citizens or permanent residents, other than for myself or my family members;

(d) meet these conditions for a period of at least one year within a period of three years after I become a permanent resident;

(e) provide to an officer evidence of compliance with the conditions within the period of three years after the day I become a permanent resident;

(f) provide to an officer:

- not later than six months after the day I become a permanent resident, my residential address and telephone number; and during the period beginning 18 months after and ending 24 months after the day I become a permanent resident, evidence of my efforts to comply with these conditions.

I also acknowledge and understand that all of my family members are subject to the condition that I meet the above conditions.

[SIGNATURE]

[DATE]