

FOCUS ON

IMMIGRATION LAW

Skilled-worker program to relaunch May 1

Changes include added emphasis on applicants' language skills

BY SHARON HO

For Law Times

With the federal skilled-worker program set to relaunch on May 1, immigration lawyer Mario Bellissimo hopes Citizenship and Immigration Canada will give first preference for admission to previous applicants.

The federal department stopped accepting applications for the program on July 1, 2012. It decided to deal with a backlog of applications by terminating those received before Feb. 27, 2008, and returning the processing fees. The government estimates the change affected 280,000 people, including dependants.

"What I would be hopeful about is instead of terminating applications is to mine that backlog and see which applicants would have a good match with current priorities," says Bellissimo, founder of the Bellissimo Law Group. He also wants the department to look to previous applicants to fill future immigration needs.

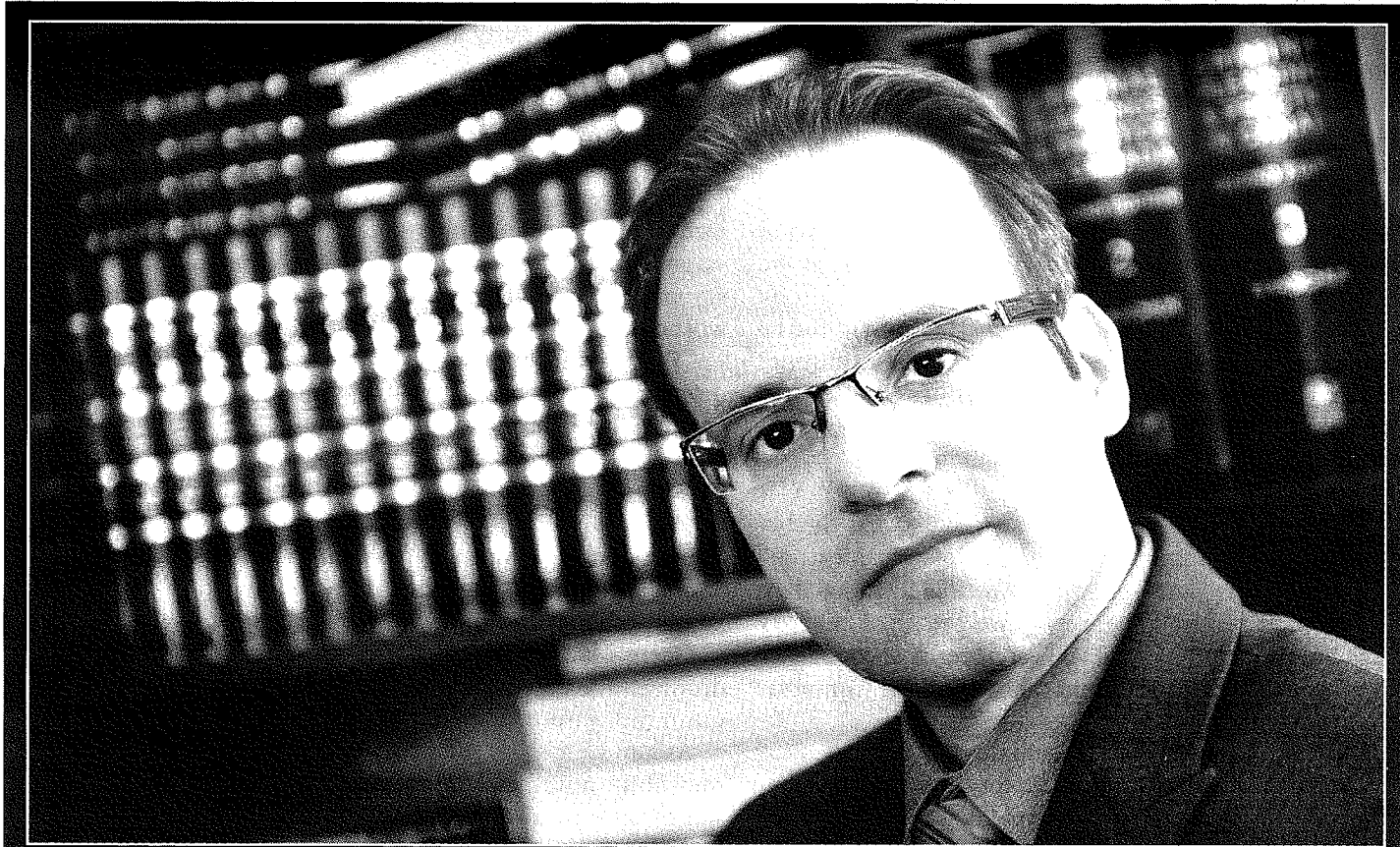
As of December 2012, the backlog of applicants under the previous program was 82,278, wrote Philippe Couvrette, a spokesman for the department, in an e-mail. The government intends to process all of the applications until it makes a decision on approving them. It expects to clear the backlog of applications by the end of 2014.

The department doesn't intend to look at previous applicants when the new program launches. "It is CIC's practice to assess all applications in accordance with the rules in place at the time they were received," wrote Couvrette.

"Previous applicants would be subject to the rules in effect at the time of their application. New applicants would be subject to the new rules."

The skilled-worker program will aim to accept 55,300 people by the end of this year. It will evaluate applicants by awarding them points based on a selection grid with a maximum of 100 points. Applicants will have to get 67 points to pass the evaluation. The government changed the program in the following ways after it put it on hold in July:

- **Language:** The changes will put a greater emphasis on a minimum language proficiency in either English or French. Language ability will become the most important criteria and carries a maximum of 28 points.
- **Age:** The government believes "younger immigrants integrate more rapidly into the labour market and spend a greater number of years contributing to Canada's economy." Therefore, the changes will grant more points, up to a maximum of 12, to younger immigrants until age 35. Diminishing points will apply to ages 36 to 46. There will be no additional points after age 47, although workers older than that can still apply to the program.



'They're hoping that they will have a better skill linkage and better economic outcomes for skilled workers going forward in the program,' says Mario Bellissimo.

- **Education credentials:** The new rules of the program require a mandatory assessment of an applicant's foreign education credentials to determine their equivalent in Canada.
- **Work experience:** The number of points for foreign work experience will decrease to 15 from 21. The number of years of work experience needed to get the full points will increase.
- **Arranged employment:** If an applicant has a job offer, Human Resources and Skills Development Canada will need to determine if the labour market needs this employee and establish that the company tried to hire a Canadian or permanent resident first.
- **Adaptability:** The criteria will change to emphasize factors that promote integration by, for example, increasing the number of points for previous Canadian work experience.

According to Bellissimo, the biggest changes to the program are the language and age criteria.

"They're hoping that they will have a better skill linkage and better economic outcomes for skilled workers going forward in the program," says Bellissimo.

He doesn't argue that an applicant's language ability and age aren't important but he doesn't think there's always a "one-size-fits-all" answer. Bellissimo believes older workers may have valuable work experience that the points system may not recognize.

Another significant change is the department's goal to process applications under the new program in months rather than years as of the end of 2013.

Bellissimo thinks that's an ambitious goal given the backlog of applications. He questions how people who applied

before the new system took effect will fare in contrast to those who apply after 2013. He believes the government needs to determine how many immigrants it will accept and what resources it will provide "as part of a global program" that processes applications across its various programs.

Stephen Green of Green and Spiegel LLP believes the just-in-time system will be a positive change if the government can process applications in 12 months. But he also believes it will be difficult for people in licensed professions to be eligible for the new federal skilled-worker program.

"The way the program works from my understanding is that if you are in a licensed profession, for example an engineer, you have to go ahead and send your education documents to the licensing association. They have to evaluate it, make sure it's a bachelor of engineering, and make sure you're eligible for licensing based on your background.

"It's going to be difficult for people outside of Canada to do that. But it's a good idea since we've always heard stories about people coming and not being eligible to work in their professions."

Whether or not there will be a list of eligible occupations for applicants will determine if the changes to the program are good ones, according to Green. The department, however, wouldn't say if it will use a list of eligible occupations or if applicants will be matched to employers when the new program begins.

Green also wonders how applicants in unlicensed professions will have their foreign educations evaluated for their Canadian equivalency.

"If you have a bachelor of arts, who do

you write to to see if your bachelor of arts from India is comparable to a bachelor of arts in Canada?" asks Green.

Green and Bellissimo believe the government's decision to return applications made before Feb. 27, 2008, wasn't a good one.

"Stopping applications until the government decides what to do isn't a bad idea," says Green.

"But some people have been waiting four, five or six years. I don't think that's fair and it gives out a message that even if you make a commitment, you wait and wait and the government can throw it back."

The Bellissimo Law Group and the Campbell Cohen law firm are currently leading a test case arguing that in terminating certain applications, the department is discriminating against people based on their country of origin. In doing so, they maintain, it violated s. 15 of the Charter of Rights and Freedoms and the decision to terminate applications was unconstitutional. If the court rules in their favour, the law giving the department the power to terminate the applications will be invalid.

"Our firm and others have challenged that law on a constitutional basis," says Bellissimo. "So my worry is with moving forward with this new program with all of that in the background that it's extremely risky and probably not the best approach. I'm worried we're moving forward before we clean up the past."

As of Feb. 6, the judge presiding in the case, Justice Donald Rennie, asked for submissions as to whether the Charter "applies to the applicants, as non-citizens residing outside of Canada." Submissions were due Feb. 22.

LT