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At Borderlaw® we are, first and foremost, immigration law experts. Our exclusive focus means that we are able to provide expert advice and comprehensive services in an increasingly complex area of law.

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When you contact us, you deal with a qualified and experienced lawyer who will take the time to identify and address your specific immigration issues.

FLEXIBILITY

We can help with a specific immigration problem or develop your business immigration plan. We provide services on a fixed fee basis or bill hourly, in US or Canadian currency, as per our clients' request.

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We value referral relationships. Because of our restricted practice area, we regularly assist Canadian, US & international law firms. We work hard to support you and your clients.

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Qualified and licensed in Canada and the US, at Borderlaw® we adhere to stringent regulatory requirements applicable to practice, accounting and ethical conduct, in both countries.

BEREZOWSKI'S BORDERLAW®

***** UPDATE *****

The Owner-Operator's Last Stand?

From: Nan Berezowski, BA. LL.B., LL.M
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In order to employ a foreign national, a Canadian employer must generally prove that there is no negative impact on the Canadian labour market. In most cases, the employer must apply for a Labour Market Impact Assessment (LMIA) and advertise the available position to Canadian citizens and permanent residents.

The Owner-Operator LMIA is exempt from advertising requirements. Instead, a foreign national effectively employs him or herself through a company that he or she controls. The Owner-Operator LMIA is for foreign nationals who will purchase an established business or launch a new one in Canada and work actively in that business.

An Owner-Operator must:

- Demonstrate a level of controlling interest in the business;
- Occupy a senior position in the company without the possibility of being dismissed and be actively involved in the management of the business;
- Provide a detailed business plan showing the business financing, the creation or maintenance of employment and associated timelines;
- Create or retain employment opportunities for Canadians/ permanent residents and/or transfer skills to Canadians/permanent resident); and
- Employ at least one Canadian or permanent resident within the first year of company activities.

After obtaining an LMIA, the Owner-Operator can be positioned advantageously to apply for permanent residence through the federal Express Entry program. He or she can receive an additional 50 or 200 Comprehensive Ranking Score "CRS" points depending on the seniority of position they have been hired by their company to perform.

In my experience, foreign nationals pursue this more complicated option because, although they have impressive business backgrounds, they are 'too old' for Express Entry. While a lack of a formal education or language proficiency could also be factors, the usual downfall is age - they are over 40 and their CRS is not competitive. In short, my clients enter the Owner/Operator arena to leverage their business success in a last resort effort to immigrate to Canada with their families.

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The principal lawyer at Berezowski Business Immigration Law, I am an internationally recognized Canadian lawyer (Ontario) and a licensed US Attorney-at-Law (New York) who has been featured in Who's Who Corporate Immigration for over a decade.

Employment Services Development Canada “ESDC” has recently proposed several changes to the Owner-Operator LMIA. These changes would include:

1. **Recruitment:** Requiring the business to make a reasonable effort to hire a Canadian or permanent resident for the position that the owner-operator intends to fill;
2. **Wages & Working Conditions:** Requiring the business to pay the operator a salary at the prevailing wage in its industry for the position; and
3. **Genuineness:** Requiring that the business be active and operating at the time of the LMIA request and that the owner be involved for one year prior to applying.

At the risk of stating the obvious, these proposed changes are impractical. For a program designed for an owner who will operate a business, it is illogical to require the owner to recruit someone else for operator position. Similarly, requiring a business to pay the operator a full salary in its formative years is inconsistent with business reality. Finally, requiring an owner-operator to be involved in the business as a pre-requisite to an LMIA (which is a prerequisite for a work permit), could result in a work permit being required to obtain a work permit!

I was recently asked to provide feedback on ESDC's proposed changes as part of a working group of the Canadian Bar Association. In our *ad hoc* submissions, the CBA Immigration section detailed the very substantial problems with the ESDC proposals.

Is it possible that ESDC does not recognize how impractical its proposals are? Or, does ESDC recognizes this impracticality but want to rid itself of the Owner-Operator portfolio?

As Express Entry and provincial nominee programs have become prominent and options for investors have dwindled, there are also fewer options for entrepreneurs to immigrate to Canada. The Owner-Operator LMIA is one such option on this short list. Rather than reducing it, the Owner-Operator LMIA should be revamped or replaced with transparent program that attracts and fairly assesses the successful businessmen and women who become Owner-Operators. For these people are well suited to contribute to Canada's post COVID-19 economic recovery.

Nan Berezowski (BA, LL.B, LL.M) compiled this Update with the latest available information for the general information of Berezowski Business Immigration Law clients and other interested parties. This Update is not comprehensive and should not be relied upon without appropriate legal advice.