

Canadian Immigration Strategies for Artists

A Paralia
Workshop
Dec. 12, 2018

with Emily Lukaweski

novate
Business & Immigration Law

www.novatelegal.ca
416-574-2203

Introduction: More Options Than Express Entry

Express Entry is Canada's flagship program for permanent resident ("PR") status. It relies on a point system, in which points are awarded for education, age, language abilities, and work experience, among other factors. In the initial step of the Express Entry process, applicant profiles are awarded points. A certain points level is needed in order to be selected from the Express Entry pool and issued an invitation to apply for PR status in Canada, (see Figure 1 below).

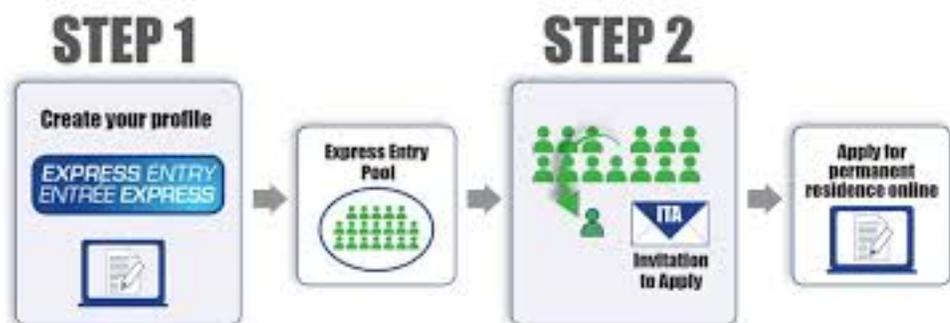


Figure 1: Outline of Express Entry System

Client feedback has shown that many artists feel they will not qualify for PR status through this system. Even though they may have extensive experience in their field, it is not recognized and so the artists is not awarded points accordingly. The result is that many artists cannot score high enough to issued an invitation to apply.

Below are some strategies for artists, aimed at providing ideas on how to creatively and effectively navigate the Canadian immigration system.

Permanent Options

Self-Employed Class

The federal government allows certain self-employed individuals to apply for permanent resident status through the self-employed class, if they have the requisite type and amount of experience. Restricted to self-employed individuals in the cultural and athletic sectors (although only discuss the cultural sector is discussed here), applicants for this class must have:

- A) taken part in world-class cultural activities
- OR
- B) been self-employed in a cultural activity,

for at least 2 years. For example, an artist who has been selling or exhibiting their work at internationally recognized art galleries outside of their native country for over two years would qualify under the first category. As another example, an artist who has been self-employed in their field for over 2 years would qualify under the second category. Self-employment does not need to be full-time and can be supplemented by other activities.

Immigration Strategy: From Temporary to Permanent

Despite an applicant's current point score in the Express Entry system, there are ways to increase that score, increasing the applicant's chances of being issued an invitation to apply for PR status. The idea is to use a temporary work permit (usually for a 1-year period) to gain Canadian work experience or to increase the applicant's English language abilities, depending on where in the initial profile a point score increase would be most useful. Once the applicant has the requisite experience, they can then apply for Express Entry with more confidence, or consider one of the Provincial Nominee Programs.

The following temporary work permit options may be useful considerations for artists looking to use this strategy.

Temporary Work Permit Options

There are numerous temporary work permit options. Below is a list of five that may be most useful to artists.

1. Intra-Company Transfer (Start-up)

Best for artists who currently own their own business in their country of residence. Through this program an artist can open a branch of their current company in Canada, into which they can transfer themselves as a manager or employee with specialized knowledge. The Canadian company must have a qualifying relationship with the parent company (e.g. a subsidiary or affiliate relationship). The artist will need to prove that either the foreign or Canadian company has the funds to support the Canadian company's operation for at least 1 year. The artist should also have a realistic business plan, showcasing their business' plans for expansion into Canada.

2. Owner-Operator Labour Market Impact Assessment (“Owner-Operator LMIA”)

The Owner-Operator LMIA is a good option for an artist who is interested in owning a business in Canada but has no existing business in their country of origin.

Most temporary work permits issued by the Canadian government are approved on the basis that there is no qualified Canadian who can fill the vacant position. This is proven through the Labour Market Impact Assessment (“**LMIA**”) process, where an employer is required to post job advertisements for a specific period of time, tracking who applied and who is interviewed, in order to prove that there are no Canadians capable of performing the job duties. All the work permits discussed here are LMIA-exempt, i.e. they are permits that allow an applicant to skip the LMIA process because of specific policy or economic reasons, except for this Owner-Operator LMIA. The Owner-Operator LMIA work permit proceeds through a shortened process that skips the usual advertisement requirements, because it is based on the premise that the foreign business owner will contribute to the economy through their business’ operation.

In order to qualify for an Owner-Operator LMIA work permit, the applicant must create a business in which they have a controlling interest (i.e. they own more than 50% of the voting shares). They must demonstrate that they will create at least 1 job for a Canadian PR or citizen, or that their business will result in the transfer of knowledge to Canadians. The applicant must also be in a position in the company from which they cannot be dismissed (i.e. they have to be the CEO or President, as opposed to the vice-president).

3. Reciprocity

Temporary work permits are also issued under Canadian legislation on the basis of reciprocal job opportunities available internationally. An applicant under this category of work permit must have an existing job offer to qualify. They must also demonstrate that Canadians have similar employment opportunities in the applicant’s country of origin. Example positions that may qualify for this work permit are artists who are coming into the country on an academic exchange or fellowship, or who are members of an international organization.

4. Professionals

Certain international trade agreements (e.g. NAFTA, CETA, Chile-Canada, CPTPP) qualify certain professionals for LMIA-exempt work permits. If you are a national of a country that is a signatory to a trade agreement with Canada and your artistic work can be fit into an occupation listed in a qualifying professional category under an appropriate trade agreement (e.g. graphic designers, interior designers, research assistants, management consultants), you could be eligible for this type of work permit.

In addition to the qualifications above, you must also have:

- A valid job offer in Canada in one of the listed professions
- Qualifications to work in that profession
- The requisite number of years of experience in the profession

5. Investor

Under NAFTA, CETA, and the CPTPP only, individuals who are willing to invest in a Canadian company can be eligible for a temporary work permit, in order to manage that investment. The investment needs to be of a substantial amount in an enterprise that the applicant will actively manage, develop and direct. The applicant must also have a controlling interest in the enterprise. This means that if an artist has a substantial amount to invest in a business in Canada (the minimum recommended amount is approximately \$100,000), then they could use that as a vehicle to immigrate to Canada.