

Ontario Immigrant Nominee Program Announces Details of its Entrepreneur and Corporate Streams

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As previously mentioned, when the Ontario Immigrant Nominee Program (“OINP”) announced the termination of its Investor Stream on October 29, 2015, it promised that it would create new Entrepreneur and Corporate Streams to replace it. On December 18, 2015, the OINP published complete eligibility criteria and application guidelines for these new business streams. Details of both are provided below.

The Corporate Stream

Overview

The Corporate Stream is intended to support established international corporations looking to expand into Ontario or buy an existing business. The OINP is currently accepting applications under this stream.

An eligible corporation begins the process by submitting an application under the Corporate Stream. If the application is approved, the corporation will be required to sign a Performance Agreement, which outlines its commitments to invest and create jobs in Ontario. Key staff will then be issued temporary work permit support letters, which they can use to obtain work permits.

Once the key staff members have arrived in Ontario, the corporation has up to 20 months from the date that they arrive to implement the business plan, actively manage the business, and meet all of the commitments outlined in the Performance Agreement. All permanent full-time jobs that have been created must have been continuously filled for at least 10 months, prior to the corporation's submission of its Final Report.

The applicant corporation is responsible for filing a Final Report with the OINP between 18 and 20 months after the key staff have arrived in Ontario with their valid work permits. The Final Report must be submitted to the OINP in order to initiate the nomination process.

If the corporation is successful in meeting the commitments outlined in its Performance Agreement, the key staff will be eligible to apply for nomination. If nominated by the OINP, these key staff members may apply for permanent residence under the Provincial Nominee Class.

Eligibility Requirements

Corporate/Investment Requirements

To be eligible under the Corporate Stream, the corporation must meet the following requirements:

- The corporation must have already been established for at least 36 months at the time of the application.
- The corporation must invest a minimum of \$5 million CAD in a new or existing Ontario business. The investment funds must have been obtained from lawful sources.
- The proposed investment activity must be of significant economic benefit to Ontario.
- If the corporation is purchasing an existing Ontario business, the following additional criteria apply: (1) the acquired business must have been in continuous operation by the same owner for the preceding 60 months, (2) the purchase must completely transfer ownership from the previous owner(s) to the corporation, (3) the Ontario business must not have been previously owned/operated by a current or former OINP business stream nominee, (4) the proposed business plan must intend to grow the business (buy and hold business plans with no intent to grow the business are not permitted), (5) the corporation must maintain, at a minimum, the current wage levels and employment terms of existing staff, (6) the corporation must preserve all existing permanent full-time jobs, and (7) the corporation must also satisfy the job creation requirement (see below).
- The corporation must create 5 full-time, permanent positions for Canadian citizens or permanent residents for each key staff member nominated. Positions must be paid or at above the prevailing wage for that position. A full time position means a position that consists of at least 1,560 hours of paid employment in a 12 month period. However, the following are not considered permanent, full-time employees even if the employee works 1,560 hours in a 12 month period: (1) seasonal or part-time employees, (2) subcontractors or agency workers, or (3) employees who do not work on the corporation's premises (i.e. employees who work from home or who telecommute).
- There must be a clear structural linkage between the parent corporation and the proposed new business in Ontario (i.e. subsidiary, branch, or affiliate of the parent).
- The business must intend to make a profit through the sale of goods and/or services.
- Primary income sources must be from active (earned) income, not passive (unearned) income.
- The proposed business must comply with Canadian legal requirements and all regulatory industry and licencing requirements, which govern its legitimate operation.
- The proposed business must comply with all provincial labour laws, including employment standards, health and safety, and labour relations legislation.
- The proposed business must be considered a permanent business in Ontario.

- The corporation must submit a business plan with its application, prepared in accordance with the OINP's requirements.

Please note that additional criteria and due diligence requirements apply where the proposed business is a land development or leasehold company. However, this is outside the scope of the present article.

Ineligible Business Types

As the OINP will not process applications for proposed businesses that are likely to have little or no long term economic benefit. Therefore, the proposed Ontario business may not be:

- Existing Franchises in Ontario (new foreign franchises expanding into Ontario are permitted) [Greater Toronto Area ("GTA") only];
- Gas Stations [GTA only];
- Tire Recycling;
- Scrap Metal Recycling;
- Pawnbrokers;
- Bed and Breakfasts [GTA only];
- Holding Companies;
- Laundromats;
- Automated Car Wash Operations;
- Payday loan and related businesses; and
- Businesses which have been previously owned / operated by current or former OINP business stream nominees

Key Staff Requirements

Applicant corporations may request up to 5 key staff members who will establish the business in Ontario and who are seeking a provincial nomination to permanently relocate to the province. All key staff must meet Stage 1 requirements at the time of the application in order for the complete application to be approved. Key staff must also meet additional nomination requirements once the business has met commitments outlines in the Performance Agreement (Stage 2) in order to be considered eligible for provincial nomination.

Stage 1 Key Staff Requirements

- Key staff must be essential to the establishment and operation of the proposed business.
- Key staff must be in a senior, executive, managerial, or specialized knowledge capacity (National Occupational Classification ("NOC") level 0 or A) in the applicant corporation's existing business.
- Only one key staff in NOC A can be proposed.
- The key staff must have at least 36 months of experience in the last 60 months, in same position that they will hold in the proposed Ontario business, with the applicant corporation. They must have been continuously working for the applicant corporation in that position during the 12 months prior to the submission of the application.
- Key staff must not have an immediate family relationship with any member of the corporation's Executive Board, Board of Directors, or a shareholder owning more than 10%

equity in the applicant corporation. Immediate family members include: spouse, mother, father, sister, brother, grandparents, and the spouse's immediate family members.

- Key staff must not hold any equity in the applicant corporation, except where it was obtained as part of the remuneration in accordance with his or her employment contract, in which case the equity must be less than 10% of the applicant corporation's business.
- The position to be assumed in the proposed Ontario business must be a permanent, full-time position and must meet prevailing wage levels.

Stage 2 Key Staff Requirements

After the corporation has met its Performance Agreement commitments, key staff will be required to meet the following additional requirements in order to be nominated for permanent residence:

- Key staff must be in a position for which they were approved by the OINP and carrying out the approved job duties.
- Key staff must physically reside in Ontario for at least 75% of each year (9 months out of the year) that they are in Ontario under a temporary work permit.
- Key staff must have a language proficiency equivalent to the Canadian Language Benchmark ("CLB") Level 5.

The Entrepreneur Stream

Overview

The Entrepreneur Stream is designed to support individuals from countries who are looking to implement a new business idea or buy an existing business in the Province of Ontario. However, unlike the Corporate Stream, individual entrepreneurs may not immediately submit an application under the Entrepreneur Stream. This is because the Entrepreneur Stream is subject to an Expression of Interest ("EOI") System, which is similar to the Government of Canada's [Express Entry System](#).

Prospective entrepreneurs may submit an EOI to indicate their interest in being considered by the OINP they but will not be permitted to apply under the Entrepreneur Stream unless they receive an Invitation to Apply ("ITA"). If the entrepreneur receives an ITA from the OINP, he or she can submit a complete application under the Entrepreneur Stream.

Under the EOI System, applicants are selected based on the number of ranking points that they receive, rather than when they file their application. As a result, an applicant who submits an EOI after another applicant but who has a higher number of ranking points will receive an ITA before that other applicant.

Once an entrepreneur has received an ITA, has filed a complete application, and has been approved, he or she then signs a Performance Agreement with the OINP. This Performance Agreement outlines the commitments that the entrepreneur has made to invest and create jobs in Ontario. The OINP will then issue a temporary work permit support letter that the

entrepreneur can use to apply for a temporary work permit, which will allow him or her to establish the proposed business in Ontario.

The entrepreneur must arrive in Ontario using their temporary work permit within 12 months from the date of their letter of confirmation. Upon arrival, the entrepreneur will have up to 20 months from that date to implement the business plan and satisfy all of the commitments contained in the Performance Agreement.

The required permanent full-time jobs must be filled within 10 months from the date of the entrepreneur's arrival in Canada they must remain filled for at least 10 months prior to the submission of the Final Report. The entrepreneur will be responsible for filing a Final Report to the OINP between 18 and 20 months after he or she has arrived in Canada. This Final Report must be submitted to the OINP in order to initiate the nomination process.

If the entrepreneur is successful in meeting the commitments described in the Performance Agreement, he or she will receive a Confirmation of Nomination, which may be used to apply for permanent residence.

Eligibility Requirements

Minimum Eligibility Requirements

There are 5 factors that have minimum eligibility requirements for the entrepreneur and, if applicable, his or her business partner:

- Experience - Applicants must have at least 36 months of full-time business experience in the last 60 months, with the last 12 months in either active general business administration or in an area of expertise related to the proposed business opportunity. This experience must be as a business owner or senior manager.
- Net Worth - If the proposed business will be located in the GTA, the entrepreneur must have a minimum net worth of \$1,500,000.00. If the proposed business will be located outside the GTA, the entrepreneur must have a minimum net worth of \$800,000.00. If the proposed business will be in the Information and Communications Technology/Digital Communications Sector (regardless of where the business is established in Ontario), the entrepreneur must have a net worth of \$800,000.00.
- Personal Investment Funds - If the proposed business will be located in the GTA, the entrepreneur must make a minimum personal investment of \$1,000,000.00 and have a minimum equity ownership of 33.3%. If the proposed business will be located outside the GTA, the entrepreneur must make a minimum personal investment of \$500,000.00 and have a minimum equity ownership of 33.3%. If the proposed business will be in the Information and Communications Technology/Digital Communications Sector (regardless of where the business is established in Ontario), the entrepreneur must make a minimum personal investment of \$500,000.00 and have a minimum equity ownership of 33.3%.
- Job Creation - The entrepreneur must commit to creating at least 2 permanent full-time jobs for Canadian citizens or permanent residents. Positions must be paid or at above the prevailing wage for that position. A full-time position means a position that consists of at least 1,560 hours of paid employment in a 12 month period. However, the following are not considered permanent, full-time employees even if the employee works 1,560 hours in a 12

month period: (1) seasonal or part-time employees, (2) subcontractors or agency workers, or (3) employees who do not work on the corporation's premises (i.e. employees who work from home or who telecommute).

- Exploratory Visit - If the entrepreneur purchases an existing business, he or she must make at least one business-related visit to Ontario within the 12 months preceding the submission of the application.

The entrepreneur must meet the minimum requirements for all of the above factors in order to be eligible to apply under the Entrepreneur Stream. If the entrepreneur is applying with a business partner who is also seeking nomination, the business partner must also meet all of the minimum requirements for each factor described above. For example, if the proposed business is located in the GTA, both the entrepreneur and the business partner must each invest \$1,000,000.00 (a total of \$2,000,000.00) and each create at least 2 permanent full time jobs (a total of 4).

General Requirements for the Proposed Business

In addition to the above minimum requirements, the proposed business must meet the following general requirements:

- The business must intend to make a profit through the sale of goods and/or services.
- Primary income sources must be from active (earned) income, not passive (unearned) income.
- The proposed business must comply with Canadian legal requirements and all regulatory industry and licensing requirements, which govern its legitimate operation.
- The proposed business must comply with all Ontario labour laws, including employment standards, health and safety, and labour relations legislation.
- The proposed business must be considered a permanent business in Ontario.
- Any third party investors must be a Schedule I or Schedule II bank or an institutional investor.

If the entrepreneur is purchasing an existing Ontario business, the following additional criteria apply:

- The Ontario business must have been in continuous operation by the same owner for the preceding 60 months
- The purchase must completely transfer ownership of the Ontario business from the previous owner(s) to the entrepreneur, the business partner, and/or third party investor(s).
- The Ontario business must not have been previously owned/operated by a current or former OINP business stream nominee.
- The entrepreneur must preserve all existing permanent full-time jobs and create 2 additional permanent full-time jobs.
- The entrepreneur must maintain, at a minimum, the current wage levels and employment terms of existing staff.
- The proposed business plan must demonstrate that the entrepreneur intends to grow the business. Buy and hold business plans with no intent to grow the business are not permitted in the Entrepreneur Stream.

As with the Corporate Stream, the OINP will not process applications for proposed businesses that are likely to have little or no long term economic benefit. Therefore, the proposed Ontario business maynot be:

- Existing Franchises in Ontario (new foreign franchises expanding into Ontario are permitted) [Greater Toronto Area ("GTA") only];
- Gas Stations [GTA only];
- Tire Recycling;
- Scrap Metal Recycling;
- Pawnbrokers;
- Bed and Breakfasts [GTA only];
- Holding Companies;
- Laundromats;
- Automated Car Wash Operations;
- Payday loan and related businesses; and
- Businesses which have been previously owned / operated by current or former OINP business stream nominees

Nomination Requirements

The entrepreneur will be required to satisfy additional nomination requirements in order to be nominated by the OINP, once he or she has established the Ontario business and met the commitments described in the Performance Agreement. The entrepreneur does not need to satisfy these criteria at the time of the initial application filing but must do so when applying for nomination after the business has been established. The nomination criteria are as follows:

- The entrepreneur must have a language proficiency equal to CLB Level 5 or equivalent.
- The entrepreneur must be physically residing in Ontario for at least 75% of each year (9 months out of the year) that they are in Ontario establishing his or her business under a temporary work permit.

EOI Scoring Factors and Breakdown of Ranking Points

When a proposed entrepreneur submits an EOI, he or she will receive a total ranking score. These ranking points may be earned in three categories: (1) experience, (2) investment, and (3) human capital; the maximum score available is 160 points. These three categories are briefly described below.

Experience Factors

The maximum number of points awarded for experience factors is 50 points.

Applicants may claim points based on past business ownership or senior management experience during the last 60 months. If an applicant has both business ownership experience and senior management experience during the past 60 months, he or she must use only 1 of these 2 types of experiences in the EOI.

The maximum number of points awarded for experience as a business owner is 25 points. A business owner must have owned at least 33.3% of the business during the period claimed. A business owner must also have played an active role, meaning that he or she was personally involved in the day-to-day operations of the business and had direct involvement in decision making.

The maximum number of points awarded for experience as a senior manager is 20 points. A senior manager's role must have included senior decision-making responsibilities in areas such as operations, sales, finance, marketing, distribution, human resources, research and development, etc.

Entrepreneurs may also claim additional points based on past specific experiences in a high growth business and/or export trade business:

- High Growth Business - Experience in a business that experienced at least a 20% increase in revenue in 2 consecutive years. Applicants will receive 15 points for this specific experience.
- Export Trade Business - Experience in a business exporting at least 20% of goods/services to a foreign market. Applicants will receive 25 points for this specific experience.

Investment Factors

The maximum number of points awarded for investment factors is 90 points. Applicants may claim points for net worth, investment amount, job creation, exploratory visits, key sectors, and NOC classification of the jobs that the proposed Ontario business will create:

- Net Worth - Applicants may claim points based on total net worth, up to a maximum of 15 points. Personal net worth must be legally obtained and verifiable.
- Investment Amount - Applicants may claim points based on the total personal investment amount that will be made into the proposed Ontario business, up to a maximum of: (1) 20 points for a proposed Ontario business located within the GTA, or (2) 25 points for a proposed Ontario business located outside the GTA or in the Information and Communications Technology/Digital Communications Sector. However, the following are not considered eligible investments: (1) cash, cash equivalents, and working capital (i.e. uncommitted funds) held by the Ontario business, and (2) wage payments made to the entrepreneur and his or her family members.
- Job Creation - Applicants may claim points based on the total number of permanent full time jobs that the proposed Ontario business will create for Canadian citizens or permanent residents, up to a maximum of 20 points.
- Exploratory Visits - Applicants may claim points based on any business-related visits to Ontario within the 1 year period preceding the submission of the EOI, up to a maximum of 5 points. However, there is no mandatory requirement for any exploratory visits unless the entrepreneur is purchasing an existing business.
- Key Sectors Targeted - Applicants may claim points depending on whether the proposed Ontario business is in a key sector, as determined by the Government of Ontario, up to a maximum of 10 points. However, there is no mandatory requirement that the proposed Ontario business be on one of these key sectors. Key sectors currently defined as economic priorities for Ontario are: (1) aerospace, (2) automotive, (3) financial services, (4) food and

beverage manufacturing, (5) information and communications technology, (6) life sciences, (7) mining, (8) tourism investment, and (9) water technology.

- NOC 0, A, or B Jobs - Applicants may claim points based on the NOC 0, A, or B jobs that the proposed Ontario business will create for Canadian citizens or permanent residents, up to a maximum of 15 points. However, there is no mandatory requirement that the 2 newly created jobs actually be in NOC 0, A, or B.

Human Capital Factors

The maximum number of points that may be awarded for human capital factors is 20 points. Applicants may claim points based on their level of education and official language ability:

- Level of Education - Applicants may claim points based on their highest level of post-secondary education completed, up to a maximum of 5 points. However, there is no minimum education requirement to be considered for the Entrepreneur Stream. Post-secondary education refers to full-time studies from a licenced post-secondary institution that leads to a credential that is the equivalent to a Canadian degree, diploma, or certificate. If an entrepreneur receives an ITA, and claiming to have completed 6 months or more of post-secondary education, they will be required to provide evidence of this education when they submit their complete application, including their Educational Credential Assessment results.
- Official Language Ability -Applicants may claim points based on their proficiency in English or French, up to a maximum of 15 points. Although there is no minimum mandatory language requirement to be considered for the Entrepreneur Stream at the EOI stage, language proficiency equal to CLB Level 5 will be required at the time that they apply to be nominated by the OINP.