



OCTOBER 2017 GLOBAL IMMIGRATION UPDATE

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Feature Article

VISA OPTIONS FOR INVESTORS: AN OVERVIEW

This article provides an overview of recent developments in several countries with respect to visa options for investors.

Canada

While at present there is no Canadian federal immigrant investor program, one can still apply to immigrate to Canada as a permanent resident under the Québec Immigrant Investor Program.

History

Canada's previous immigrant investor program was created in 1986 and went through a number of changes over the years. The hallmark of the program was that it provided for a passive, not at-risk, investment.

On June 19, 2014, Bill C-31 became law in Canada and federal immigrant investor program applications that were in the backlog were terminated and no new applications accepted.

Québec Immigrant Investor Program

The Québec Immigrant Investor Program, which also began in the 1980s, has allowed thousands of families to immigrate permanently to Canada. In many cases, these families might not otherwise have qualified to immigrate (due to education, language, and/or age barriers) under any of the other Canadian or Québec permanent immigration programs.

To be eligible for the Québec Immigrant Investor Program, an applicant must:

1. Have, alone or with an accompanying spouse, including a de facto spouse, net assets of at least \$1.6 million Canadian dollars (approximately \$1.2 million U.S. dollars) obtained legally, excluding the amounts received by donation less than six months before the date on which the application was filed;
2. Have experience in management in a legal farming, commercial, or industrial business, or in a legal professional business where the staff, excluding the investor, occupies at least the equivalent of two full-time jobs, or in an international agency or a government or one of its departments or agencies (note that "management experience" is defined as the exercise, for at least two years in the five years preceding the application for a selection certificate, of duties related to the planning, management, and control of financial resources and of human or material resources under the person's authority; experience does not include experience acquired in the context of an apprenticeship, training, or specialization process attested to by a diploma); and
3. Intend to settle in the province of Québec and sign an agreement to invest \$800,000 Canadian dollars (approximately \$610,000 U.S. dollars) with a financial intermediary (broker or trust company) authorized to participate in the Investor Program. Currently, there are 18 financial intermediaries

authorized by the Québec government to participate in the Québec Immigrant Investor Program. After five years, the monies are returned to the applicant but without interest. Alternatively, the \$800,000 Canadian dollars can be financed through the financial intermediary.

The assessment of an application will also take into account other factors such as age, the nature and duration of professional training, and language skills.

At present, the Québec Immigrant Investor Program is the only possible passive (not at-risk) immigrant investor program that exists in Canada.

Application Cap and Processing Times

For the 2017–2018 Québec fiscal year (April 1, 2017–March 31, 2018), Québec will accept 1,900 Immigrant Investor Program applications (with a cap of 1,330 for citizens of China). Interestingly, the 1,900 overall cap does not apply to those who have advanced intermediate knowledge of the French language as attested to by a standardized French test recognized by the Québec government. The application period began May 29, 2017, and runs through February 23, 2018.

Processing times are approximately 10 to 14 months (most applicants are interviewed by the Québec government) for the Québec portion of the process. It then takes an additional 12 to 30 months, approximately, for the Canadian government to complete the immigration process (the Canadian government's role is to check that there are no medical, criminal, or security inadmissibility issues).

Source of Funds

Quebec carefully scrutinizes the source of all of a Québec Immigrant Investor Program applicant's funds, and not just the minimum net worth of \$1.6 million Canadian dollars. The onus is on the applicant to transparently explain in a detailed prescribed narrative document (and possibly at an interview) all of his or her past and present economic activities and how the assets were acquired.

Canadian Permanent Residence—Residency Obligations and Citizenship

Once Québec and Canada approve an application, the applicant, his or her spouse (including common-law or same-sex spouse) and his or her children all become Canadian permanent residents and can reside in any Canadian province. To maintain Canadian permanent resident status, a Canadian

permanent resident normally must be physically present in Canada for at least 730 days in every five-year period.

Canada does not have a citizenship-by-investment program and, as such, a foreign national must be "naturalized" to become a Canadian citizen.

As of the fall of 2017, a Canadian permanent resident can apply for Canadian citizenship after being physically present in Canada for 1,095 days during the five years immediately before the date of his or her application for Canadian citizenship.

Alternative Programs

While there are no other passive Canadian immigrant investor or entrepreneurial programs, options exist to apply for Canadian permanent resident status under other business-related programs, which include

1. Start-up visa program
2. Self-employed program (in cultural activities or athletics at a world-class level)
3. Provincial nominee business/entrepreneur programs

Conclusion

The Québec Immigrant Investor Program is a viable passive investment option for immigrating to Canada with no risk. As such, it is worth considering by investor applicants who have management experience and want themselves and their immediate family members to settle in Canada and become Canadian permanent residents.

Italy

Italy welcomes high-net-worth individuals with new favorable tax rates and a dedicated visa option for foreign investors.

The Italian Budget Law, effective January 1, 2017, contained several measures aimed at attracting foreign investments and encouraging high-net-worth (HNW) individuals to move to Italy. Among these are the introduction of a preferential tax regime for wealthy individuals who take up tax residency in Italy and a new visa program for HNW investors that facilitates the procedure for entry and residence in Italy. Until now, Italian immigration law, unlike other European Union countries, did not provide for a dedicated entry-for-investment visa.

Below are highlights of these new efforts under the Italian Budget Law.

Favorable Flat-Tax Regime

On March 8, 2017, the Italian Revenue Agency (*Agenzia delle Entrate*) issued flat-tax-regime implementing provisions. The law is now fully effective, and guidelines and a checklist of requirements are available. Individuals who become Italian tax residents can take advantage of a substitute tax regime on their foreign income. Regardless of amount, foreign income will only be subject to a yearly flat tax of €100,000. Close family members can also benefit from the favorable tax measures: a flat tax of just €25,000, instead of €100,000, will be applied to their foreign income. Moreover, opting for the new regime guarantees full exemption from reporting requirements with respect to financial and non-financial assets abroad and from succession duties on assets outside Italy. To qualify for the option, the applicant must not have been resident in Italy for at least nine tax years during the previous 10 years; eligible taxpayers can ask to benefit from the substitute tax regime when filing their tax returns; before then, it is possible to submit a preliminary ruling (*interpello*) to the Italian Revenue Agency.

Dedicated Visa Option: Investor Visa

New provisions have been introduced in Italian immigration law in the framework of promoting foreign investments. An "investor visa" will shortly be available to foreigners intending to invest in Italy under one of the following options:

- €2 million in government bonds, to be kept for at least two years
- €1 million in the share capital of an Italian company, reduced to €500,000 if the company is an innovative start-up
- €1 million in philanthropic donations (culture, education, immigration management, scientific research, or cultural heritage)

Currently, the government is working on implementing an online system for applications that is expected to be launched by the end of November. Applications will be possible only after the online platform is published and the relevant operations manual is ready.

The main points of the decree include:

- The authority in charge of evaluating the applicant's eligibility conditions

will be a special committee made up of various authorities, including representatives of the Ministry of Economic Development, Ministry of Interior, Ministry of External Affairs, tax authorities, and financial police;

- The applications will be managed through an online platform yet to be created, as noted above;
- Among the documents required, the applicant must submit a police clearance for each country where he or she has lived in the previous 10 years;
- The application will follow three basic steps: online clearance (nulla osta) application; visa application at the consulate in the foreign country; and residence permit application in Italy;
- Within three months from the date of entry, the applicant must provide documented evidence of the investment or donation. Failing to do so will result in denial of the residence permit;
- In case of disinvestment before the terms or if the holder is untraceable, the residence permit can be revoked at any time;
- After two years, the residence permit can be renewed for an additional three years subject to approval of the committee.

The investor visa implementing decree is at

<http://www.sviluppoeconomico.gov.it/index.php/it/normativa/decreti-interministeriali/2036986-decreto-interministeriale-21-luglio-2017-nuovo-visto-per-investitori> (in Italian).

Peru

This article provides brief comments on the investor visa in Peru.

On January 7, 2017, the New Law of MIGRACIONES, Legislative Decree No. 1350, was published in the Official Gazette, "El Peruano." The new law and regulations, approved by Supreme Decree No. 007-2017-IN, have been in force since March 1, 2017.

This new immigration legislation has instituted a series of changes and the creation of new migratory statuses. One of these changes concerns investors. The new law allows a foreigner to establish, develop, or manage one or more lawful investments in Peru.

The amount of the investment and other conditions are established by regulation. Eligibility requirements include:

A) An investment equal to or higher than 500,000.00 Peruvian Sol (PEN), equivalent to approximately US\$155,275. The investment amount can be modified by Superintendence Resolution.

B) Serving only as manager or director of a foreign person's own company, for which he or she must comply with the corresponding labor or tax rules. This position of the foreigner is not included in quotas for the local company's payroll, established in Legislative Decree No. 689 (Law of Hiring of Foreign Personnel) and its regulations. Under no circumstances may the foreign person support the investment through the transfer of shares.

MIGRACIONES is the authority that grants this migratory status. The Investor visa allows multiple entries. The foreign individual receives a resident permit (foreign card/*carné de extranjería*) for 365 days, renewable while the same conditions exist.

Procedurally, there are two alternative ways to obtain Investor status. First, an "obtainment visa process" implies that all the necessary documentation is submitted at MIGRACIONES offices in Peru; however, the applicant remains abroad initially. Once his or her visa is approved, he or she collects it from the Peruvian consulate previously chosen. Then he or she comes to Peru to finish the process. This procedure takes 30 working days from the time of initial filing. Alternatively, a "change of immigration status (in-country) process" implies that the foreign national enters Peru in tourist or business migratory status, then applies at MIGRACIONES for the Investor visa and submits the required documentation. This procedure takes 60 working days from the time of initial filing.

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Country Updates

BELGIUM

A new Act implements a European Union directive regarding new rules on assignment.

An Act of December 11, 2016, effective December 30, 2016, implemented EU Directive 2014/67/EU regarding assignment. This Act provides that the Belgian inspection services can ask the foreign posting undertaking to submit four types of documents:

1. Copy of employment contract (or a similar document),
2. Miscellaneous information (information regarding foreign currency for payment of salary, the allowances or benefits in kind related to employment abroad, and the conditions for repatriation),
3. Overview of the working hours (start, end, and duration), and
4. Proof of salary payment.

This list of documents can be modified by an implementing Royal Decree.

Furthermore, the inspection services can ask for a translation of the documents into one of the Belgian official languages (Dutch, French, German) or English. Waivers/exemptions can be created by Royal Decree, based on the limited duration of the activities in Belgium or the specific nature of these activities. After the termination of the posting, the documents should be kept available for one year. During and after the assignment (one year), the documents can be kept in paper or electronic form.

The posting undertaking also has to designate a person to liaise with the Belgian inspection services. This person must forward documents (see #2 above) to the inspection services, if requested. Information regarding the person to liaise must be noted in the Limosa declaration: This change has been implemented by a Royal Decree dated September 14, 2017, and will take effect on October 1, 2017. The following information must be mentioned:

- Name, first names, and date of birth;
- Capacity of person to liaise; and
- Address (physical and email), and telephone number.

The person to liaise can be the employer or a third person. During parliamentary discussions of the Act, it was confirmed that the person to liaise can be domiciled abroad.

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CANADA

The Canada-European Union Comprehensive Economic and Trade Agreement (CETA) came into force on September 21, 2017. This article discusses provisions relating to work and business provisions.

Chapter 10 of CETA contains various labor mobility provisions for citizens of the European Union (EU) who are seeking entry into Canada for work and/or

business-related purposes.

The provisions of CETA apply to Canada and to EU members: Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden, and the United Kingdom.

CETA is expected to facilitate the entry into Canada of three main categories of business visitors and professionals as described below:

Business Visitors

CETA adds to the existing Business Visitor provisions in the *Immigration and Refugee Protection Regulations* by extending the scope within which eligible candidates may seek entry into Canada for business purposes.

Under CETA, specific provisions have been established for Short-Term Business Visitors and for Business Visitors for Investment Purposes to enter Canada. Annex 10-D of CETA provides a detailed list of all the activities permissible for short-term business visitor entries into Canada, which differs from the business visitor activity list provided in the North American Free Trade Agreement (NAFTA). Notable examples under CETA include entry for business visitors for meetings and consultations, for training seminars, and for commercial transactions.

In addition to Short-Term Business Visitors, individuals can enter Canada as Business Visitors for Investment Purposes. A business visitor for investment purposes is described as "an employee in a managerial or specialist position who is responsible for setting up an enterprise but who does not engage in direct transactions with the general public and will not receive direct or indirect remuneration from a Canadian source."

Individuals seeking to enter Canada under either of these Business Visitor categories can be granted entry into Canada for a maximum duration of 90 days in any six-month period.

Professionals

Two types of professionals can obtain Work Permits under CETA: contractual service suppliers and independent professionals (self-employed professionals).

To be eligible for these Work Permit categories, contractual service suppliers or

independent professionals must be employed in the EU, their employer must not have an existing establishment in Canada, and the employer (or the individual in the case of an independent professional) must have a contract to provide services to a Canadian customer in Canada. Unlike Appendix 1603.D.1 of NAFTA, Annex 10-E of CETA includes a list of the service sectors within which contractual service suppliers or independent professionals can obtain a Work Permit. Thirty-seven service sectors are available to contractual service suppliers, including 17 for independent professionals. Most occupations found under these service sectors are limited to managerial and professional occupations (skill levels 0 and A of the National Occupational Classification (NOC) system).

These types of Work Permits are exempt from the standard Labour Market Impact Assessment (LMIA) process and can be issued for a maximum duration of 12 months. Work Permits under this category can be renewed at an immigration officer's discretion.

With the exception of certain Romanian and Bulgarian citizens, eligible candidates will be able to apply for these LMIA-exempt Work Permits directly at a Canadian Port of Entry. Romanian and Bulgarian citizens who require a Temporary Resident Visa (TRV) to enter Canada will be able to benefit from the two-week processing for Work Permits under the Global Skills Strategy, an initiative launched by Immigration, Refugees and Citizenship Canada (IRCC) on June 12, 2017.

Key Personnel

• Intra-Corporate (Company) Transferees and Graduate Trainees

CETA offers both a Senior Personnel and a Specialist Work Permit category akin to what is available under NAFTA as a Senior Manager or a Specialized Knowledge worker. However, CETA uniquely introduces a new Work Permit subcategory under the Intra-Corporate (company) stream specifically for Graduate Trainees. Under this subcategory, a candidate who is a citizen of the EU, who possesses a university degree, and who has been offered employment in a subsidiary or a branch of their employer abroad can obtain a one-time 12-month Work Permit to enter Canada for career development purposes or to receive training in the company's business techniques and methods.

• Investors

Another similarity between NAFTA and CETA is the Investor Work Permit category. Under the new provisions of CETA, an investor candidate who can obtain a Work Permit is someone who is employed by a company that "has committed or is in the process of committing a substantial amount of capital" into the Canadian economy and who will "establish, develop or administer the operation of an investment in a capacity that is supervisory or executive."

It will also be possible for eligible candidates to apply for these LMIA-exempt Work Permits directly at a Canadian Port of Entry, with the same limitations described above for certain Romanian and Bulgarian citizens.

For more information on CETA (business visitors), see <http://www.cic.gc.ca/english/resources/tools/temp/work/international/canada-eu/business.asp>. For more information on CETA (investors), see <http://www.cic.gc.ca/english/resources/tools/temp/work/international/canada-eu/investor.asp>.

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ITALY

Italy introduces a new type of tourist visa and launches a new online consular electronic Schengen visa form. This article also clarifies guidance on "business" and "work" activities for Schengen short-term assignments.

New tourist visa. The Italian ministry of foreign affairs has introduced a new category of tourist visa, "*Turismo—Visita famiglia/amici*" (Tourism—Visit to family/friends), for family members or friends of individuals residing in Italy who wish to visit them for a maximum period of 90 days within 180 days.

Eligibility requirements are similar to the standard tourist visa (e.g., evidence of means of support during the stay, health insurance), but the key factor is an invitation letter from the family member or friend in Italy, confirming availability to host the visa applicant.

New online Schengen visa form. The Italian government has launched a new Web portal, "*E-application*," through which Schengen visa applicants can now fill out the visa application form online. The new system only applies to short-stay visa applications—for up to 90 days in Schengen countries (Schengen visa).

Long-term visa applications will continue to be filed using the paper application form.

The government says the new system will ensure greater accuracy of the data entered in the application form and reduction of typos, resulting in an overall improvement in consular services in terms of efficiency, cost, and time optimization.

The online form is available in Italian and English at <http://e-applicationvisa.esteri.it/>. The process requires the applicant to fill out the online application form, sign it, and print the form containing the barcode, then take it to the relevant Italian consulate.

"Business" and "work" activities for Schengen short-term assignments. For short-term assignments (maximum of 90 days), the Schengen Visa Code and most European Union (EU) national laws do not clearly define which activities can be considered "business" (thus not requiring a work visa) and those which are considered "work." Useful guidance, however, which has some international recognition, can be found in the Commentary to article 15 of the 2014 OECD Tax Model Convention, which set forth the rules for the international taxation of income from employment.

The Schengen Handbook for the processing of visa applications and the modification of issued visas contains a non-exhaustive list of supporting documents for business trips and for persons traveling for the purpose of carrying out paid activity: "The applicant must provide a work permit or any similar document as provided by the national legislation of the Member State where a paid activity is to be carried out, if applicable."

Most, if not all, laws of Schengen Member countries do not contain a clear and specific definition of what can be considered "business." This is a gray area, and many companies do not have clear instructions when they are sending their employees for short business assignments (i.e., for a maximum 90 days in every 180-day period) in the Schengen area.

Italy, for example, defines business visitors as "foreigners who intend to enter the country for commercial/economic purposes, to make contacts or conduct negotiations/arrange deals, for learning or verifying the use and functioning of capital goods purchased or sold under commercial and industrial cooperation agreements."

Useful guidance—which has valid foundations at the international level (at least among OECD countries)—for assessing whether an activity can be considered

"business" or be subject to obtaining a work permit can be found in the OECD Commentary to the new OECD Tax Model Convention. Section 8.14 of the commentary to Art. 15 of the Convention (which set forth the rules for the international taxation of income from employment) states that:

Where a comparison of the nature of the services rendered by the individual with the business activities carried on by his formal employer and by the enterprise to which the services are provided points to an employment relationship that is different from the formal contractual relationship, the following additional factors may be relevant to determine whether this is really the case:

- who has the authority to instruct the individual regarding the manner in which the work has to be performed;
- who controls and has responsibility for the place at which the work is performed;
- the remuneration of the individual is directly charged by the formal employer to the enterprise to which the services are provided ...;
- who puts the tools and materials necessary for the work at the individual's disposal;
- who determines the number and qualifications of the individuals performing the work;
- who has the right to select the individual who will perform the work and to terminate the contractual arrangements entered into with that individual for that purpose;
- who has the right to impose disciplinary sanctions related to the work of that individual;
- who determines the holidays and work schedule of that individual

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TURKEY

The United States and Turkey have mutually suspended certain visa services.

On October 8, 2017, the U.S. Department of State (DOS) announced that it was suspending nonimmigrant visa services at its diplomatic facilities in Turkey. Nonimmigrant visas include business, tourist, student, and temporary work authorization visas. The suspension applies to diplomatic and official visas. Ambassador John Bass said, "his suspension of services is not a visa ban on

Turkish citizens. It's a suspension of our consideration of new visa applications. If you have a valid visa, you can still travel to the United States. If you want to apply for a visa at another U.S. embassy or consulate outside of Turkey, you are free to do so."

Ambassador Bass said the suspension was due to the arrest of a Turkish staff member of the U.S. diplomatic mission in Turkey. That staff member was allegedly linked to the U.S.-based cleric Muhammed Fethullah Gülen Hocaefendi, who Turkey has blamed for a failed coup, according to reports. Turkey has similarly suspended nonimmigrant visa services at its diplomatic facilities in the United States.

A statement posted by the U.S. Embassy & Consulates in Turkey said, "Turkish citizens with valid visas may continue to travel to the United States. Turkish citizens are also welcome to apply for a nonimmigrant visa outside of Turkey whether or not they maintain a residence in that country. Please note that an applicant applying outside of Turkey will need to pay the application fee for services in that country, even if a fee has previously been paid for services in Turkey."

Immigrant visas have not been suspended.

As Turkey's visa suspension for U.S. citizens is breaking news, there are a few clarifications and unresolved issues:

What is clear as of now:

- No new visa, whether e-visa, student, AMS visa, or work visa, will be issued to a U.S. citizen, regardless of the consular post location, until further notice. The e visa website will not proceed once U.S. citizenship is selected.
- Those with valid work or residence cards are currently still allowed entry.
- Airlines outside of Turkey are already asking passengers to present a current visa, work or residence cards to proceed with check-in. If not shown, they will likely not be allowed to board.

There is no formal government statement yet regarding whether the visa must have been activated (or initially used) before October 8, 2017. Although initially officers in Sabiha Gokcen airport indicated the visa had to be used at least once before October 8, passport officers at the main airport (Ataturk Airport) in Istanbul verbally confirmed that initial entry on the visa before October 8 is not

required. Observers remain cautiously optimistic that any U.S. citizen with a valid Turkish visa in their passport or e-visa can use it regardless of whether an initial entry already occurred.

Passport officers in Ataturk airport also informally communicated that U.S. citizens with an alternate nationality and passport would not be restricted from applying for a Turkish visa based on that passport.

What remains unknown:

It is unknown whether the Ministry of Labor or Interior Ministry (who issue work and residence cards) may follow up to issue their own bar for U.S. citizens. As of today, observers have seen no denials of work or residence permit applications (whether initial or renewal) of U.S. citizens. However, supervisors at the Work Permit Directorate have informally indicated that work permits for U.S. citizens are on hold for now and that the Directorate is anticipating firm guidance on this issue soon. However, it is clear that if the work permit application is not a domestic filing (i.e., filed while the U.S. citizen held a current residence permit) or a renewal, the applicant will not be able to finalize his or her work authorization to issuance of a work visa unless this diplomatic stalemate is resolved.

Ambassador Bass's statement is at

<https://tr.usembassy.gov/ambassador-john-bass-statement-suspension-visa-services-turkey/>. The statement from the U.S. Embassy & Consulates in Turkey is at <https://tr.usembassy.gov/visas/>. Additional information is at <https://twitter.com/USEmbassyTurkey>.

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