



# **Immigration of Workers into Australia, Canada, Sweden and the United Kingdom**

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## **IMMIGRATION OF WORKERS INTO AUSTRALIA, CANADA, SWEDEN, AND THE UNITED KINGDOM**

If an individual were to inquire about the chances of the governments of Australia, Canada, Sweden, or the United Kingdom allowing him or her to immigrate into those countries as an eligible foreign worker, he or she would find that they vary greatly. On one extreme is Sweden. While that nation, like virtually all other industrialized ones, does have significant laws respecting the entry of refugees, close family relatives, and possessors of work permits, it does not have a practice of annually granting permanent residence and a conditional right to apply for citizenship to either a fixed or varying number of persons who wish to live and work in Sweden indefinitely.

The United Kingdom is similar to Sweden in that it does not issue the equivalent of what is termed a "green card" in the United States to persons who are able to secure lawful employment in that nation. However, the United Kingdom does allow persons who have been in the country for four years in approved employment or permit-free employment to apply for settlement. A person who is settled in the United Kingdom is allowed to remain in the country indefinitely and is not subject to restrictions on accepting employment. Thus, becoming settled in the United Kingdom does have features similar to obtaining an immigration visa from the United States. Nevertheless, the United Kingdom approved the settlement of only 3,700 persons in 1988.<sup>1</sup>

Canada is one country that does allow persons to immigrate as eligible foreign workers. In fact, the Federal Government expects to accept between 50,000 and 57,000 independent-class immigrants in 1990. Yet, while this is a fairly large number for a nation of just over twenty-five million, it is less than the 61,000 family-class immigrants to whom Canada intends to grant permanent residence during the same period.<sup>2</sup> When the independent-class is broken down to reveal that nearly one-quarter of its members are assisted family immigrants, it becomes quite clear that family

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<sup>1</sup> Gt. Brit., Home Office, *Control of Immigration: Statistics United Kingdom 1988*, Cmnd. 6, No. 726, § 1 (1989).

<sup>2</sup> Simpson, "A New Emphasis on Immigration," *Toronto Globe and Mail*, Nov. 1, 1989, at A6 (See enclosed photocopy).

reunification has remained the primary goal of Canadian immigration policy. Nevertheless, the recent decision to allow approximately 3,000 more skilled workers to immigrate to Canada over the next twelve months than were granted permanent residence in 1989 indicates that the Federal Government is intent on placing somewhat more emphasis on economic needs in designing and implementing its immigration policy.

Canada uses a complicated points system in selecting aliens who apply for admission as workers. However, while a failure to accumulate a sufficient number of points awarded on the basis of a person's background, skills, age, and linguistic abilities will usually doom an application for an immigrant visa, the accumulation of even a large number of points will seldom assist any prospective foreign worker who does not have a firm offer to fill a position that no citizen or landed immigrant is able and willing to accept.

Australia also uses a point system in selecting what it terms "economic immigrants." This system weighs such factors as an applicant's skills, age, language proficiency, education, and employability. Individuals who obtain a "priority mark" stand a very good chance of being issued immigrant visas. In the period 1989-1991, Australia intends to accept approximately 54,000 "economic migrants" a year.<sup>3</sup> This figure is considerably lower than the 71,000 family class immigrants that the country expects to gain admission each of the same three years, but in addition to being relatively large for a nation of just over sixteen million, it represents a higher percentage of Australia's total immigration level than the comparable one for Canada. Thus, Australia has the most generous immigration policy respecting foreign workers of the four nations surveyed.

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<sup>3</sup> 41 *New Legislation of the Australian Parliament* 1061 (1989).

## AUSTRALIA

The law and policy governing immigration into Australia has recently been changed as a result of a comprehensive review by a parliamentary committee whose report was presented in December 1988.<sup>4</sup> The review was undertaken in recognition of growing concern and misunderstanding about Australian immigration policy. The committee stressed that immigration into Australia should only be allowed in the best national interest, as balanced by economic, social and humanitarian imperatives.

During the debate on amending legislation, the government announced the decision to maintain an annual quota of 140,000 immigrants during the period 1989-1991, comprising the following categories:

71,000	family reunion
54,000	economic migrants
14,000	humanitarian
1,000	specially eligible migrants <sup>5</sup>

For purposes of this report, the second category of migrants consisting of skilled workers and business persons, is examined. These economic migrants are numerically assessed against an employability factor and awarded points for job skills, age and language skills. The points system is used in conjunction with an Occupational Shares System which, after an annual survey, publishes a list of skilled occupations for which migrants are needed. An allocation of "shares" is made for each occupation listed. Some of the skills listed in the past include, actuaries, occupational therapists, plumbers, etc. Points awarded in 1989 included:

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<sup>4</sup> Report of the Committee to Advise on Australia's Immigration Policies (1988).

<sup>5</sup> As stated by Immigration Minister, Robert Ray, during debate on the report: 41 *New Legislation of the Australian Parliaments* 1061 (1989).

Skills	Points
Occupations, as defined under a classification system, requiring	
- trade certificate/degree with continuous relevant experience, and listed on occupation shortage list	75
- as above but not included on shortage list	70
- as above, without experience	60
- diploma with experience	45
- diploma without experience	40
- trade certificate/degree requiring minor upgrading, with experience	35
- as above, without experience	30
- post-secondary school qualification	30
- secondary school qualification	20
Age	
- 18-24	25
- 25-29	20
- 30-34	15
- 35-39	10
- 40-44	5
Language	
Proficient English	15
Reasonably proficient English	10
Bilingual other than English or limited English	5 <sup>6</sup>

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<sup>6</sup> *Id.* at 1075.

Under the ensuing Migrant Legislation Amendment Act 1989, No. 59, the operation of the point system is described as follows:

Applicants in the points-tested visa classes will be scored against set criteria. Depending on the mark achieved, applicants will be treated in one of four ways. If they achieve a sufficiently high score, referred to as the priority mark, they will move on to the next stage of processing. If they achieve a lower mark, referred to as the pool entry mark, they will be placed in a pool for further consideration against a variable passmark, determined on the basis of the number of available places and the marks of applicants in the pool. If they fail to reach this passmark, their applications may be rolled over for reconsideration when the mark is next varied. Applicants who fail to meet the pool entry mark will be rejected immediately. The various marks may be altered from time to time by gazettal.<sup>7</sup>

Beginning December 19, 1989, the set criteria used in the points system appear to have been revised by raising the educational and professional requirements.<sup>8</sup> According to the Immigration Minister, the new system "ensures a sharper economic focus to the whole migration programme."<sup>9</sup>

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<sup>7</sup> *Id.* R 1074.

<sup>8</sup> *Reuters*, Dec. 18, 1989.

<sup>9</sup> *Id.*



## CANADA

In order to lawfully accept employment in Canada, an alien must normally have first obtained a work permit or been granted permanent residence. There is no hard and fast rule as to when a prospective foreign worker should apply for a work permit and when he or she should apply for landed immigrant status. However, the latter is usually granted only to persons who intend to remain in Canada indefinitely.

With very few exceptions, an alien's application for a work permit will only be considered if it is supported by an offer of employment issued by a Canadian company or other type of business entity that is prepared to swear that it has been unable to find a Canadian citizen or permanent resident who is willing and able to accept that position. Upon receipt of such an application, the Department of Employment and Immigration can conduct its own search to find a suitable Canadian employee. In the event that this procedure proves fruitless or is dispensed with, the Department of Employment and Immigration will issue a Confirmation of an Offer of Employment. Once this has occurred, the applicant will usually be granted a permit valid for twelve months unless he or she falls into a prohibited category.

Canada does not have worldwide or country quotas for the selection of immigrants, but the Federal Cabinet does approve annual immigration levels that are rarely exceeded by more than ten percent. In 1990, the Department of Employment and Immigration expects to grant landed immigrant status to between 132,000 and 142,000 persons exclusive of refugees. This figure represents an increase over the target set for 1989 of about 15,000. Canada's new arrivals are expected to be composed of approximately 61,000 family-class immigrants and between 50,000 and 57,000 independent-class immigrants.<sup>10</sup> Since nearly one quarter of the independent-class

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<sup>10</sup> Simpson, "A New Emphasis on Immigration," *Toronto Globe and Mail*, Nov. 1, 1989, at A6 (See enclosed photocopy).

immigrants are expected to be assisted family immigrants, it can be said that family reunification has remained the primary goal of Canadian immigration policy. However, the latest projections include a modest boost of approximately 3,000 for applicants who do not fall into either the family-class or assisted family class of immigrants. This increase was approved in response to criticisms that Canadian immigration policy was becoming too concerned with family reunification and too little concerned with its other major goal of promoting the national economy.

The independent immigrant class of immigrants can be divided into entrepreneurs, investors, self-employed persons, and workers. While the latter constitute by far the largest number of independent class immigrants, they are normally subject to the same onerous requirements respecting the obtaining of a Confirmation of an Offer of Employment as are persons seeking work permits. Workers must also acquire a high number of points on Canada's complicated selection test before they are eligible to be granted permanent residence. Thus, while an offer of employment is almost always required of prospective immigrants seeking to enter Canada as workers, it is not a guarantee of acceptance even for aliens who do not fall into a prohibited category.<sup>11</sup>

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<sup>11</sup> *Doing Business in Canada*, § 4.04[2] (MB 1989) (See enclosed photocopy).

## SWEDEN

The rules governing work permits for foreigners are stipulated in the Alien Act of 1989.<sup>12</sup> Accordingly, an alien who intends to work in Sweden must have a work permit. However, a foreigner who is already a permanent resident is not required to obtain a work permit.

The work permit is granted for a definite period of time, and it must specify a type or certain types of work. It should also contain other instructions as deemed necessary. A work permit may be withdrawn under certain circumstances, e.g., intentional misrepresentation and the like. The work permit is granted by the State Immigration Board.

Moreover, according to the Alien Regulations of 1989,<sup>13</sup> in addition to alien permanent residents and certain categories of refugees, the nationals of Denmark, Finland, Iceland, Norway and former Swedish citizens are exempted from the requirement of a work permit.

A foreigner who applies for a work permit may not be granted admission to enter Sweden before obtaining such a permit. However, persons belonging to categories mentioned above and individuals who intend to join a close family member with whom they have lived together abroad are excepted from this rule, provided the individual who is going to be joined by a close family member is already a permanent resident of Sweden.

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<sup>12</sup> SFS 1989:529. Note that Sweden does not have an immigration law like the United States, although the central authority for the alien affairs is called the State Immigration Board.

<sup>13</sup> *Id.* 1989:547.

## UNITED KINGDOM

Immigration into the United Kingdom is controlled under the Immigration Act 1971<sup>14</sup> and the Immigration Rules.<sup>15</sup> Under their provisions, skilled workers and economic migrants are allowed into the country in the following categories:

1. Approved employment under a work permit.
2. Business and self-employed persons.
3. Permit free employment.

### **Work permit**

This is available for positions in which no suitable resident worker is available and the employer has made adequate efforts to find qualified persons from within the United Kingdom and the EEC countries.

A work permit is usually granted for a period of twelve months or less. An extension is usually allowed if the applicant is still engaged in the permitted employment. The extension is normally given for a period of three years.

If the permit holder remains employed in the United Kingdom for four years, he becomes entitled to apply for permanent settlement. After settlement is approved, the person may engage in any business or profession or take or change any employment.

### **Business and self-employed persons**

Those willing to invest at least £150,000 in a business in which they will be occupied full-time may also seek admission into the country. Several other conditions have to be fulfilled.

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<sup>14</sup> Ch. 77, as amended.

<sup>15</sup> HC 169/1983, as amended.

The initial period is restricted to twelve months with extensions allowed for further twelve-month periods.

As with work permit holders, if a person stays in the business category for four years, he is entitled to apply for leave to settle indefinitely in the United Kingdom.

### **Permit free employment**

The following only require clearances for entry into the United Kingdom:

- a) the sole representative in the United Kingdom of a foreign firm which has no branch, subsidiary or other representative,
- b) employees of foreign governments or international organizations,
- c) journalists representing foreign media, and
- d) ministers of religion.

The initial period of stay allowed is twelve months, renewable for three years. After four years, the person is entitled to stay permanently.

### **Some statistics**

In 1988, a total of 30,000 work permit holders and their dependents were admitted, 4,200 more than in 1987.<sup>16</sup> Those who were allowed to permanently settle after completing four years in employment or as business persons totalled 3,700 in 1988, 350 more than in 1987.<sup>17</sup>

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<sup>16</sup> Gt. Brit., Home Office, *Control of Immigration: Statistics United Kingdom 1988*, Cmd. 6, No., 726, § 1 (1989).

<sup>17</sup> *Id.* at 4. A fuller account of the applicable law and practice is given in Clifford-Turner, *Doing Business in the United Kingdom*, para. 42.05[1] et seq., (1988) (a copy is attached).