



The Truth behind Entrepreneur Condition Removals
CBA Immigration Seminar
February 7, 2003
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Entrepreneur immigrants have been coming to Canada for over 20 years. They immigrate to Canada with conditional visas, and are obligated to invest in a business, and participate in the management of that business, which will create at least 1 job for a Canadian, within 2 years from the time that they land in Canada.

Entrepreneur immigrants have usually had a successful business in their home country, in manufacturing, trading, or other industries. They would have accumulated a net worth ranging from \$300,000 CDN, to several Million CDN or more. And they would have some time to get used to Canada prior to having to start up their business, or invest in a business with some other partners.

Yet my experience, as well as those of many other Canadian Business Immigration lawyers, is that most Entrepreneur immigrants find it very difficult to find a business to fulfill their immigration conditions. And many are enticed into paying \$30,000 to \$75,000 to unscrupulous businesspeople or "professional advisors", who have schemes of dubious legality, in order to try to "beat the system".

Why has this proven to be so difficult? And why do otherwise astute businesspeople resort to desperate schemes to try to fulfill their immigration conditions?

This paper will examine some of the reasons for the problems arising out of the Entrepreneur Immigrant Program, and suggest an approach for Entrepreneurs to plan their Condition Removal.

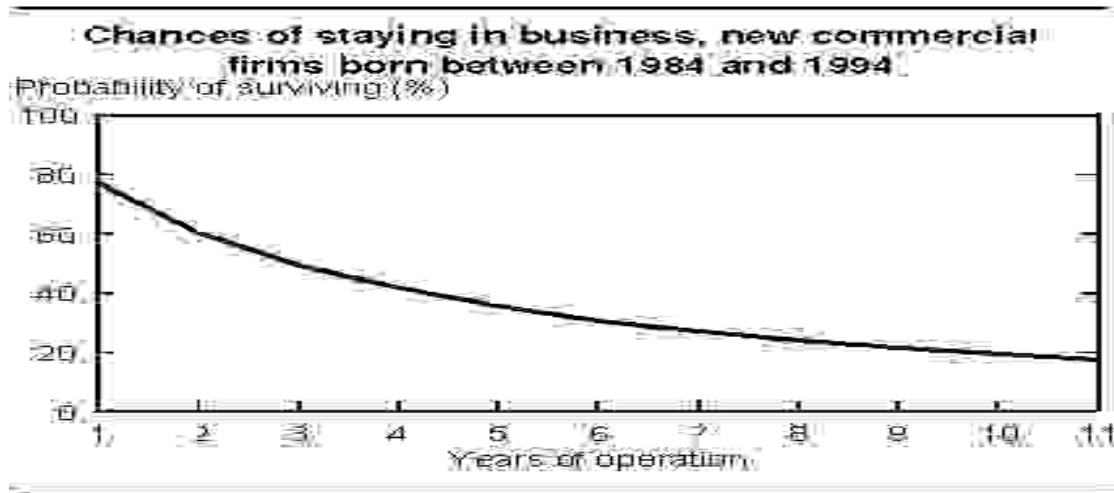
The 2 Year "Time Bomb"

Entrepreneurs have 2 years in which to find, invest in, and participate in the management of a qualifying business in Canada; the conditions are actually for 3 years, in which you must have owned and helped manage the business for at least 1 year. If they fail to do so, the visas for them and their families could be cancelled.

Yet often, Entrepreneurs do not take this seriously. And they end up taking their time, looking at endless business opportunities, only to come up with nothing. I have warned many entrepreneur clients of their investment and management obligations, only to have them reject dozens of businesses because the businesses they looked into did not meet their expectations. And the same entrepreneurs are devastated when they are deported for failing to meet their terms and conditions!

It's Not Easy for ANYONE to Do Business in Canada

A study of 1.3 Million businesses published by Statistics Canada showed that 40% of all new businesses will fail within the first 2 years of operations. And most of these businesses surveyed were started by Canadians, who would have known the language, the culture, have Canadian contacts, and likely have known about their business prior to commencement.



Source: Statistics Canada: 1999

Failure rates for new Canadian firms: New perspectives on entry and exit

Additional Handicaps for the Entrepreneur

In addition to the challenges facing Canadian born businesspeople, Immigrant Entrepreneurs ("IE's) face several additional handicaps. Here are a few of them:

1. **Language:** IE's are often not fluent in English. While many businesspeople are able to hire local employees or work with Canadian partners who are conversant in English and the IE's native language, this increases the reliance on others, and reduces the chances of success.
2. **Culture:** Most IE's come from cultures which are vastly different from Canada's. What people consume, wear, use, and what they will pay for goods & services in Canada are often very different from the IE's home country. This often takes much time to learn.
3. **Business norms:** Many IE's come from places where the business norms are very different: how you deal with suppliers, customers, employees, competitors, government departments, and so on. And this too, takes time to learn.

4. ***Human Resources:*** Many IE's come from places where employees are not well educated, paid poorly, and have limited rights. Dealing with an educated workforce, with higher expectations, both in terms of wages and working conditions, is often a shock to many IE's.

5. ***The Canadian Market:*** Many IE's come from places where there is a large market in a small area. For example, Taiwan has 22 Million people in an area smaller than Vancouver Island; and China has several cities with over 8 million people. BC has a population of about 4 Million, and all of Canada has only about 30 Million. So selling and distributing goods and services is completely different than in many IE's home markets.

6. ***Business Contacts:*** Unlike in their home countries, where they have lived and done business for many years, most IE's have few business contacts in Canada that they can deal with comfortably.

7. ***Laws:*** Many IE's are not used to dealing with Canadian laws and regulations. Issues as to what is legal, what is taxable, zoning issues, and a host of other factors which the Entrepreneur is unfamiliar with can inhibit the Entrepreneur's chances of success.

The Myth of Transferable Business Skills

It may seem trite to say that methods of doing business in each country is different. There are differences in availability and cost of capital; the cost, skills, and expectations of the employees that you hire; the legal, cultural, and competitive environments; the size of the target markets for your products; and a host of other factors. And what is required to be a successful businessperson in one country is not the same as what would be required in another.

But what would appear to be obvious has not transformed itself into Canadian Immigration policy. There are political reasons, of course, why Canadian immigration law must be "colour blind". Yet the reality is that the entrepreneur immigrant coming from western countries such as the USA, Australia, and the UK, where business and cultural norms are similar to Canada, will have a much better chance of success than the entrepreneur from countries such as China, Korea, and Taiwan. And yet the irony is that almost 50% of the Business immigrants to Canada in the past 3 years have come from the latter 3 countries. Is it any wonder, then, that many Entrepreneurs find it extremely difficult to invest in and manage successful businesses?

CHART FROM BUSINESS IMMIGRANTS 1999-2001

BUSINESS CLASS BY TOP TEN SOURCE COUNTRIES (Principal Applicants)

COUNTRY	1999			2000			2001		
	#	%	Rank	#	%	Rank	#	%	Rank
China, People's Republic of	478	13.14	3	899	23.41	1	1,301	31.87	1
Korea, Republic of	710	19.51	1	653	17.00	2	507	12.42	2
Taiwan	538	14.78	2	314	8.17	3	306	7.50	3
Pakistan	90	2.47	9	113	2.94	9	223	5.46	4
Iran	171	4.70	5	182	4.74	5	200	4.90	5
Hong Kong	339	9.32	4	242	6.30	4	139	3.41	6
United Kingdom	123	3.38	8	109	2.84	10	117	2.87	7
Netherlands, The	126	3.46	7	115	2.99	8	110	2.69	8
India	66	1.81	12	122	3.18	7	97	2.38	9
United Arab Emirates	44	1.21	15	90	2.34	12	92	2.25	10
Germany, Federal Republic of	152	4.18	6	130	3.38	6	89	2.18	11
Switzerland	78	2.14	10	54	1.41	14	36	0.88	18
Total for Top Ten Only	2,805	77.08		2,879	74.95		3,092	75.75	
Total Other Countries	834	22.92		962	25.05		990	24.25	
Total	3,639	100		3,841	100		4,082	100	

Source: "Facts and Figures 2001"

Citizenship and Immigration Canada

The Problem of Unrealistic Expectations

The legendary investor, Warren Buffet, once described a simple formula for investment analysis: "*A bird in the hand is worth two in the bush.*" Buffet wrote that every investment must be weighed against the "bird in the hand" which has a guaranteed return, such as US Government Treasury bills. Then, one must consider the number of potential birds in the bush; when they would likely come out; and the likelihood of being able to catch them.

As at January 26, 2003, the TD Bank was offering 1.75% per annum on a 1 year Term Deposit, to 3.25% interest on a 5 year Term Deposit. So if an investor wants a "risk free" investment, it must be measured against these benchmarks.

I have had many Immigrant Entrepreneurs tell me that they MUST earn \$50,000 or more per year, in order to maintain their families in Canada. Yet, they do not want to invest more than \$100,000. And they want to have a "safe" investment, in which they will not lose their capital.

The “risk free” \$100,000 investment generates you, at most, \$3,250 per year. Is it realistic for a new IE to develop a business which will earn \$50,000 or more per year through his/her own efforts in a new country? While it’s not impossible, it certainly isn’t the norm that I have observed in 20 years of law practice!

But with their unrealistic expectations, many IE’s spend years, often looking at over a hundred business opportunities, in the hope that they will find a business which will meet all of these expectations. And they end up with “analysis paralysis”, because every business that they find has something which does not meet their criteria.

And the 2 year “Time Bomb” keeps ticking away.....

The “Astronaut Syndrome”

The Chinese have a term for immigrant businessmen who have their wives and children in Canada, while operating their businesses in Asia: “Kong Chong Fei Ren”, or “Astronauts”. These immigrants spend the minimal time in Canada they can get away with, while making as much money as they can overseas in the business, and environment, that they know.

Yet by doing this, the IE has little chance of really developing the skills and contacts needed in order to succeed in doing business in Canada. They are usually making more money (and paying less taxes), than they would ever make in Canada. However, as Entrepreneurs with conditional visas, they still have the 2 year “Time Bomb” they will eventually have to face!

This is another reason the lawyer must explain all options carefully to the client before proceeding as an Entrepreneur. If the client is seriously considering an “Astronaut” lifestyle, you should advise them to seriously consider the Investor category.

Of Need and Greed

Other immigrants have few illusions about the difficulties of succeeding in Canada. Their main objective is to remove their immigration conditions without disrupting their business overseas or lifestyle they enjoy. So when someone tells them that they can pay \$30,000 to \$75,000 to solve their Immigration conditions, and still carry on their business in their home country, this seem very attractive. Whether or not it is legal is secondary; in fact, many promoters of these schemes say they’ve done it before, and gotten away with it, and not to worry. That is, before they are caught.

Under the IRPA, there are severe sanctions against engaging in misrepresentations. These will apply not only to the Immigrant (who could lose his/her status because of the misrepresentations) but to any advisors, professional or not, who induce or assist the immigrant in perpetrating the misrepresentation.

As a Business lawyer, I find that 2 things drive any business deal: NEED; and GREED. When both sides have lawyers, accountants, and professional advisors to protect them, you can usually reach a fair (and legal) business deal. However, when you have IE’s with a pressing NEED, and immigration consultants, accountants, or even lawyers, purporting to act for the IE but are instead, driven by GREED, you have a recipe for trouble!

And so the IE gets enticed into an “easy way out”, which is fraught with danger.

So what is the Answer?

After all of this, is there any hope for the Entrepreneur immigrant? The answer is YES! There are 2 areas to consider: the fulfillment of the IE’s Immigration Conditions; and building a successful business. We will first consider the Immigration Conditions.

Condition Removal under IRPA

Under the old Immigration Act, the Entrepreneur’s conditions were very subjective, and not enforced consistently, even in the same Province. Because of this, it was often difficult for lawyers to give definitive opinions on whether a proposed investment would qualify to fulfill an Entrepreneur’s immigration conditions.

One of the big improvements to IRPA has been to set out very clear and objective requirements for the fulfilment of Terms and Conditions by Entrepreneurs. This makes it possible for lawyers to give opinions (with appropriate conditions) as to whether a proposed investment would remove the Entrepreneur’s conditions. Entrepreneurs must now meet the following criteria:

1. Invest in and own at least 1/3 of the voting shares of a Qualifying Business;
2. Participate in the management of the Qualifying Business; and
3. Create at least 1 incremental job for a Canadian.

The Qualifying Business must meet 2 out of the following 4 criteria for at least 1 year, depending on how much of the voting shares the Entrepreneur owns:

Percentage owned	100%	50%	33%
Annual Sales	\$250,000	\$500,000	\$750,000
Net Profit	\$25,000	\$50,000	\$75,000
Net Assets	\$125,000	\$250,000	\$375,000
Full time Employees	2	4	6

From the above table, you can see that some factors are controllable, while others may not be. As such, you can be in a position to advise the IE as to whether or not his proposed investment will likely be able to fulfill his/her Immigration conditions.

You can be fairly sure of the number of Full Time employees that the business hires; and the Net Assets (assuming that the business doesn’t lose money to bring it below the threshold). Sales and Net Profit are more difficult to assess before the business is operational, but if the IE is thinking of investing in or buying a business with a track record, you can measure the criteria against past performance.

Beyond the Immigration Conditions

Building a successful business requires Commitment; Focus; Realistic expectations; Hard work; Risk; and Perseverance. The lawyer should review these matters with the client, and ensure that the client “counts the cost”.

1. **COMMITMENT.** You need to be committed to establishing a business in Canada, either alone or in partnership with others. If you are still concentrating on your business overseas, and trying to establish a business in Canada part time, your chances of failure are greatly increased.
2. **DO A PERSONAL INVENTORY:** Consider what contacts, experience, assets, and abilities you have that may be useful in Canada. For example, if you were in the Beverage industry in Asia, you may consider working for a food company that is interested in exporting to Asia.
3. **LEARN NECESSARY SKILLS:** If you need to learn English, make that a priority. You should also consider some courses in basic business skills, such as marketing and accounting, so that you know how business is done in Canada.
4. **CONTACTS:**
 - a. Hire a good Immigration lawyer who understands business, and a good accountant. They can be valuable not only to do legal or accounting work, but to introduce you to potential businesses.
 - b. Work with a business broker or realtor who deals primarily in business sales. Interview a few of them, but decide who you feel comfortable with, work with only one, rather than many. Brokers get paid on commissions only, so they won't be inclined to work hard for you if they know that you are not morally committed to buying from them.
 - c. Develop a relationship with your banker, BEFORE you need to borrow any money. Start with credit cards, term deposits, and perhaps a VIP package. They may also be a source of business introductions.
5. **BE REALISTIC:** Don't expect to get very good returns, unless there is substantial risk involved. Have your lawyer and accountant review any potential business opportunities before you commit to anything, and be wary of promoters who say that this is just a waste of money. Remember: If it looks too good to be true, it probably is.
6. **CONSIDER WORKING WITH LOCALS:** If there is a successful local business that is in need of capital for expansion, you may want to consider investing with them: this could help you overcome a lot of the Entrepreneur's Handicaps mentioned earlier. The key is to locate a credible business that needs capital and your contacts. Remember Warren Buffet's rule, however: the more successful the business, the less the risk, and the less the return on your investment.

7. **CONSIDER FRANCHISES:** Another way to overcome many of the Entrepreneur's Handicaps is to purchase a franchise business. You may also want to meet a Franchise Consultant to assess possible franchise businesses. A good franchise business will have established systems and manuals, training for owners and managers, and ongoing advertising programs which will usually give you a better chance of success than doing it alone. Most established Franchises have some screening procedures, and it is often difficult for new immigrants to meet their qualifications.
8. **MAKE A DECISION WITHIN 12 MONTHS:** The earlier you decide, the more you can learn about the business before actually investing. And if the business does not turn out, at least you have more time to try another business.

By doing all of the above, the Immigrant Entrepreneur will have a very good chance of not only removing his or her terms and conditions of landing, but developing a successful business in Canada. The IE may not make much money out of the business (remember that 40% of Canadian businesses will fail in the first 2 years), but at least he or she will have defused the 2 year "Time Bomb", gained some Canadian business experience, and protected his or her family's immigration status.

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