

**IMMIGRATION REGULATIONS  
FOR  
FOREIGN RELIGIOUS AND CHARITABLE WORKERS**

**I. Introduction**

Although representing a small minority of the foreigners coming to Canada, religious workers are almost all leaders of congregations or groups, and have a far greater impact on Canada than their numbers alone would suggest. Besides immigration issues, we often have to deal with ancillary issues such as Provincial Medical insurance coverage, schooling for children, and Work Permits for spouses. This article will examine the Immigration Regulations, comment on how some of these are being implemented, and some of the issues that arise out of that.

**II. The General Principle**

*Prohibition against “Work”*

The general rule is that a foreigner must not work in Canada unless he or she has a Work Permit, or is otherwise permitted by the Regulations to work without a Work Permit. Under the Immigration Regulations: ***“work” means an activity for which wages, commission or other valuable consideration is earned, or that competes directly with activities of Canadian citizens or permanent residents in the Canadian labour market.”***

Note that even unpaid activities come within the definition of “work”, if it could be seen as taking a job opportunity away from a Canadian. *Thus, if a foreign visitor came to Canada and volunteered to help a church update its computer systems, or serve food in retirement homes, or clean up homes for the needy, he or she would likely need a Work Permit.*

*Severe sanctions against unauthorized work*

If a person has engaged in unauthorized work in Canada, he or she would be barred from obtaining an Work Permit for a period of 6 months from the date the unauthorized work ceased. Thus, where a foreign visitor innocently volunteered to assist others in doing work, even if it is connected with a ministry, he or she could be banned from obtaining a legitimate Work Permit for 6 months, even if the violation was with the best intentions. And if he or she did not disclose the volunteer work in Canada, he or she could be found to have made a misrepresentation which would render him or her inadmissible and liable for deportation!

So it's very important to determine whether what the foreign worker is going to be doing in Canada, and to determine whether or not a Work Permit is needed.

### **III. Religious Workers performing Spiritual Duties**

Immigration Regulation 186(l) provides that a foreigner may work in Canada without a Work Permit for a congregation or group, helping it to achieve its spiritual goals, if the main duties are to preach doctrine, perform functions related to gatherings of the congregation or group, or provide counselling in spiritual matters.

*“Performing functions related to gatherings of the congregation or group”* appears to be much wider than the previous immigration regulations, which specified activities such as preaching, teaching on spiritual matters, and administering liturgy. The changes were presumably to admit clerics from religions other than Judeo-Christian ones; however, it does open the door for some other religious positions in Christian churches and ministries. For example, some churches have full time “Intercessors”, whose primary function is to pray for people and situations, both in and outside the local church; these people may qualify under this category now.

Those who are performing these spiritual duties for a congregation or group may be admitted as Visitors to Canada, and be exempt from having to obtain a Work Permit to do those activities.

#### ***Does not include Non-Spiritual Duties***

Note that the main duties must consist of preaching, performing functions related to the group’s meetings, and spiritual counselling. If the main duties included things outside those areas, such as administration, bookkeeping, or other duties, that person would require a Work Permit.

#### ***Parachurch and Missionary Organizations***

Some positions within Parachurch and Missionary organizations do not naturally “fit” into the Clergy exemptions, because their ministry is not primarily *“assisting a congregation or group in the attainment of its spiritual goals.”* For example, raising funds for overseas missions, or administration for these organizations, would not fit the Clergy exemptions.

They may fit under the broader category for “Religious and Charitable workers” in Reg 205(d), described below, although Canada Immigration has a restrictive position on this..

On the other hand, some positions within Parachurch and Missionary organizations may well fit within the Reg 186(l) Clergy exemption. However, as many Immigration Officers are not well versed in the operations of churches and ministries, you must explain clearly how and why the position fits within the Regulation.

#### **IV. Procedures for Religious Workers with Spiritual Duties**

##### ***Clergyman outside Canada***

If a church has hired a pastor from outside Canada, he or she would come to Canada as a visitor, or “Temporary Resident”. Depending on which country the pastor is from, he or she may first need to obtain a visa before coming to the Port of Entry (usually an airport or by car at the Canada/US border). For example, pastors from the USA, the UK, or South Korea would not need to obtain visitor visas to Canada, while pastors from the Philippines, Taiwan, or Russia must have them.

Upon arrival at the Port of Entry, the immigration officer will examine the Pastor as to his or her purpose of coming to Canada, and review any supporting documentation. *The onus is always upon the Pastor to prove that he or she is coming to Canada for a temporary purpose, and will leave Canada after the expiry of his or her valid status....even if the long term intention is to immigrate to Canada.*

Assuming that the immigration officer is satisfied that the person meets the requirements of Regulation 186(l), and is really coming to Canada for a temporary purpose, the officer will issue a document called a “Visitor Record” to the Pastor. This document would note that the person is being admitted to Canada as a Temporary Resident, to perform exempt duties under Regulation 186(l), and specify the church or organization that the Pastor will be working for.

The Visitor Record noting that the Pastor is working for a specific church or ministry would assist the Pastor in obtaining a Social Insurance Card; obtaining Medical Insurance; and having his or her children in school in Canada. The Visitor Record is usually valid for up to 1 year, as opposed to the usual 6 months that a visitor to Canada would be allowed.

##### ***Clergyman already in Canada***

If a church or other ministry wishes to hire a Pastor who is already in Canada (for example, a student or graduate from a Canadian seminary), and the main duties will consist of those set out in Regulation 186(l), it could be able to do so without the Pastor having to obtain a Work Permit or Visitor Record, and he or she could receive a salary and benefits.

Although no documentation is legally necessary, it is advisable to obtain a Visitor Record for the reasons set out above. This also gives the church or organization peace of mind about the Pastor’s status and employment by their organization.

## **V. Non-spiritual Duties for Foreign Workers**

If a person is coming to Canada to work in a religious or charitable organization, and performing duties other than those specified under Regulation 186(1), they usually need to obtain a Work Permit. Generally, the Immigration Officer will require an opinion from Human Resources and Skills Development Canada that the employment of the foreign worker would not adversely affect employment opportunities for Canadians; this process is called an HRSDC “Temporary Employment Confirmation”, or “Validation”.

### **1. HRSDC Temporary Confirmations**

An employer can make an application to HRSDC to have a temporary position for the foreign worker “confirmed”, pursuant to the Immigration Regulations. The employer must establish that hiring the foreign worker would not have a negative economic effect on the Canadian labour market. To do so, HRSDC may require proof that the employer has made attempts to recruit a Canadian (for example, by advertising); proof that the salary and benefits offered is at market rates (to prevent employers from recruiting cheap labour from overseas); and details about what the foreign worker will be doing. The assessment will be done by the HRSDC office where the employer is located, recognizing that the job market is different in different cities across Canada.

In the Spring of 2003, we discovered that HRSDC had an internal policy of not giving Temporary confirmations for positions where there might be an Exemption such as Reg 186(1) available. Our position is that there is no basis in law for this, and that as long as the employer can establish that hiring the foreign worker would not have a negative economic effect, HRSDC must approve the position. In May 2003, we made formal submissions to the National office of HRSDC, and after much correspondence and negotiation, we were able to persuade HRSDC as to concede our legal position.

### **2. HRSDC Confirmation Exempt Categories**

In some cases, Canadian employers may hire foreign workers without the need for HRSDC Temporary Confirmations. The foreigner must still apply for a Work Permit, but the employer will not need to prove to HRSDC that there would be no negative economic effect on the Canadian labour market.

One useful category for foreign churches or mission organizations who have, or wish to open, a Canadian branch office, is the Intra-Company transferee category. If a Missionary organization in Asia wished to transfer to their Canadian branch an executive, manager, or someone who has “specialized knowledge”, they may be able to use this provision. The transferee would have had to be employed by organization for at least 1 year in the past 3 years.

## VI. Expansion of Provisions for Non-spiritual Workers?

IRPA Regulation 205(d) of the IRPA Regulations may expand the possibility for non-spiritual religious or charitable workers substantially. It reads, in part:

205. A work permit may be issued under section 200 to a foreign national who intends to perform work that...
- (d) is of a religious or charitable nature.

The plain language of the new regulation would imply that:

- a) A foreign worker need not be working for a Canadian “congregation or group”, as long as he/she is doing religious or charitable work. This could include:
- i) “Church planters” from another country, who come to establish a church;
  - ii) Counsellors for street kids, who don’t “minister” to a particular congregation; or
  - iii) Others religious/charitable workers that don’t fall within the 186(1) exemption.
- b) The foreign worker COULD receive remuneration for this work;
- c) A person performing “spiritual” duties, who may meet the exemption requirements of Regulation 186(1), could also apply for a Work Permit under this category.

As at May 2005, however, Canada Immigration has persisted in interpreting this section more restrictively, and imposes the following requirements:

- a) It does not apply to religious workers who are entering to preach doctrine or minister to a congregation.
- b) The individual can not receive remuneration, other than a small living expense;
- c) The employing organization will not be paid for services rendered by the foreign worker; and
- d) The work does above and beyond normal work in the labour market, whether remunerated in some manner or not. Some examples Canada Immigration gives are:
  - A. Organizations which gather volunteer workers to paint or repair the houses of the poor may qualify, provided that the work would not otherwise be done;
  - B. L’Arche, which relies on people to live full-time in a group home with people who have developmental disabilities; or

- C. Persons who are giving their time to community or religious organizations in a position which would not represent a real employment opportunity for Canadians or permanent residents. Such work would entail a requirement to be part of, or share the beliefs of, the particular religious community in which they are working.

By the above examples, it is apparent that Canada Immigration wishes to restrict Reg 205(d) to situations where the “work” permitted does not compete with Canadian labour market activities...in which case, no Work Permit would be needed in any event! However, Canada Immigration’s policy is not law, and that is NOT what the Immigration Regulations clearly state. We believe that Canada Immigration’s position is wrong in law, and our submissions to Canada Immigration regarding this have been rejected. This may require a court challenge to their position to compel them to rectify their position.

## **VII. Conclusion**

In conclusion, the Immigration Regulations have yielded some increased opportunities for Religious Workers, and some setbacks. The law and its application will continue to evolve for some time, and we shall continue to press the Canada Immigration authorities and the government, on both the policy and the legal sides, to facilitate the entry of foreign Religious Workers to Canada to live, work, and immigrate.

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