

OP 7-B PROVINCIAL NOMINEES

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Edited by Operational Information Management Division, OMC, CIC

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1. What this sub-chapter is about

Note: This chapter is divided into two sub-chapters: OP 7(a) - Quebec Skilled Workers and OP 7(b) - Provincial Nominees.

Canada has entered into bilateral agreements with all provinces (except Quebec) and with the Yukon and Northwest Territories to allow those provinces to nominate individuals to become permanent residents based on the provinces' assessment of the nominees' ability to contribute to the economic growth and development of that province.

This sub-chapter explains what the provincial nominee class is and how to process applications. Hereinafter, the word province refers to both provinces and territories.

2. Program objectives

The Provincial nominee class is designed to enable provinces to support the immigration of persons who have expressed an interest in settling in their province and who the province believes will be able to contribute to the economic development and prosperity of that province and Canada.

3. The Act and Regulations

This section contains references to the *Act*, its *Regulations* and the forms associated or mentioned in this chapter.

Table 1

| For information about | Refer to |
|--|---------------------|
| Federal-provincial agreements | A8 |
| Selection of a member of the economic class | A12(2) |
| Becoming a permanent resident | R71.1 |
| Provincial nominee class | R87 |
| • Exclusion from the provincial nominee Class | R87(5) and R87(6) |
| • Definitions | R87(9) |
| • Transitional provisions | R87(10) and R87(11) |
| • Requirements for accompanying family members | R87(12) |

3.1. Forms required

The forms required are shown in the following table.

Table 2

| Form title | Form number |
|--|--|
| Guide for Provincial nominees | IMM EP7000 |
| Application for Permanent Residence in Canada | IMM 0008EGEN |
| Schedule A: Background/Declaration | IMM 5669E |
| Additional family information | IMM 5406E |
| Economic Classes - Provincial nominees | IMM 0008Esch4 |
| Economic Classes - Provincial nominees - Business Nominees | IMM 0008Esch4A |
| Visa office-specific forms | See list on CIC's Web site |
| Use of a representative | IMM 5476E |

4. Instruments and delegations

Nil.

5. Departmental policy

The provincial nominee rules recognize that provincial governments are best positioned to determine their specific economic needs with respect to immigration.

Immigration officers can assume that a candidate nominated by a province does, in the view of the provincial officials, intend to reside in the nominating province and has a strong likelihood of becoming economically established in Canada.

However, the immigration officer may become aware of information that might bring these assumptions into question. In these cases, it is open to the immigration officer to ultimately refuse to issue a visa to the provincial nominee. Refusals of provincial nominees are discussed in Section 7.6 of this chapter.

5.1. Applicants with valid temporary status in Canada

A foreign national who has been issued a permanent resident visa in the Provincial Nominee Class and who is a temporary resident in Canada must, to become a permanent resident, present their permanent resident visa to an officer at a port of entry or at a Citizenship and Immigration Canada (CIC) office in Canada (refer to R71.1).

A foreign national outside Canada who has been issued a permanent resident visa must present their visa at a port of entry, upon entry to Canada, to become a permanent resident.

5.2. Order of admission of the applicants

Accompanying family members of provincial nominee applicants may only become permanent residents at the same time as, or after, the principal applicant has become a permanent resident. In other words, family members of principal applicants cannot become permanent residents before the principal applicant (refer to R87.1).

All accompanying family members of principal applicants in the provincial nominee class, who have been issued permanent resident visas and are seeking admission to Canada on or after September 2, 2008, may become permanent residents only if the principal applicant has become a permanent resident in accordance with the regulations in effect as of September 2, 2008.

5.3. Passive investment and immigration-linked investment

A passive investment occurs when an individual invests capital in a business or organization without being actively involved in its management. Such an investment is prohibited under the *Immigration and Refugee Protection Regulations*. Foreign nationals are therefore precluded from being considered members of the provincial nominee class if the nomination was based on their provision of capital or their participation in an immigration-linked investment scheme.

A foreign national may still be considered a member of the Provincial Nominee Class if:

- the capital provided to a business is not made primarily for the purpose of deriving interest, dividends or capital gains;
- the foreign national controls, or will control, at least 33 ⅓ percent of the equity in the business, or has made a minimum of \$1 million equity investment in the business;
- the foreign national will participate actively, on an ongoing basis, in the management of the business; and
- the terms of investment in the business do not include a redemption option.

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As is consistent with the federal business classes, the percentage of equity controlled by both the principal applicant and their spouse or common-law partner will be considered.

Exclusions

R87(5) excludes from the provincial nominee class any applicant:

- whose nomination was based on the provision of capital (passive investment); or
- who intends to participate or who has participated in an immigration-linked investment scheme.

These exclusions are meant to prevent the provincial nominees program from undermining the federal immigrant investor program.

6. Definitions

6.1. "Passive Investment Proposal"

A passive investment proposal involves an investment by a foreign national that has as one of its objectives to facilitate or lead to the nomination of the foreign national by the province, and the foreign national's successful immigration to Canada. Characteristics of such a proposal would include:

- the foreign national will not have active, ongoing or direct responsibilities in managing or operating the enterprise financed; or
- the terms of investment include a redemption option exercisable after a specified period of time; or
- the foreign national will not reside in the nominating province.

Officers are strongly encouraged to inform International Region/RIM at CIC-NAt-operational-RIM-TFW@cic.gc.ca if they become aware of a new passive investment scheme.

6.2. Immigration-linked investment scheme

"Immigration-linked investment scheme" is defined in R87(9). The definition includes any strategy or plan where:

- the agreement or arrangement was entered into primarily for the purpose of acquiring status or privilege under the Act; or
 - one of the objectives is to facilitate immigration to Canada; and
 - one of the objectives of the promoters of the strategy or plan is to raise capital.
- Officers are strongly encouraged to inform International Region/RIM at CIC-NAt-operational-RIM-TFW@cic.gc.ca if they become aware of a new immigration-linked investment scheme.

Note: In cases of investment schemes, R87(6)(b) requires that the provincial nominee applicant controls a percentage of equity in the business equal to or greater than 33⅓ percent or makes an equity investment in the business of at least \$1,000,000. These requirements are consistent with active and ongoing management of a business as set out in R87(6)(c).

6.3. Provincial nomination certificate

This certificate is issued by the government of a province, under a provincial nomination agreement, to an applicant who intends to reside in that province. The documentation goes directly from the province to the visa office. It should not arrive via the applicant or any agent working on the applicant's behalf.

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It has been agreed that provinces will forward nomination information to the visa offices in a spreadsheet format via Entrust. The spreadsheet must contain the same information about each candidate as would a separate nomination certificate. In addition, the visa office has to be satisfied that the spreadsheet is indeed coming from the responsible provincial or territorial authority.

7. Processing provincial nominees

7.1. Forms required

Provincial nominees must complete the IMM 0008EGEN application, the IMM 0008Esch4/sch4A and any other required forms and documents as instructed in the Guide for Provincial Nominees IMM EP7000.

7.2. Roles and responsibilities

Provinces have the authority and responsibility to establish their own criteria for nomination, insofar as the criteria are not incompatible with national immigration policy, while the federal government maintains its responsibility for applying statutory admissibility criteria and exercising ultimate selection authority as described in the Regulations.

CIC is responsible for:

- assessing the candidates' admissibility;
- assessing their eligibility under R87; and
- rendering a final decision on their eligibility as members of the provincial nominee class (R87(2)).

7.3. Receiving the provincial nomination certificate

When an individual is nominated by a province for selection in the provincial nominee class, the province sends the certificate of nomination directly to the visa office.

7.4. Receiving the application for immigration

Some provinces will ask the applicant to complete the immigration application and send it directly to the appropriate visa office. Other provinces may choose to assist the nominee with the completion of the application and send the nominee's application to the visa office on his or her behalf.

In either case, the visa office may create a file before receipt of the nomination spreadsheet.

7.5. Transitional provisions

In accordance with the regulatory amendments described in Section 5.3, **all applications for permanent residence in progress** at the federal level prior to September 2, 2008 will be assessed according to the regulation in effect immediately prior to September 2, 2008, as will all nomination certificates issued on or before September 1, 2008.

Please note that the application for permanent residence **does not** need to have been received by September 2, 2008; only the nomination certificate itself must have been issued as of September 1, 2008, or earlier.

New applications with a nomination certificate issued on or after September 2, 2008 are subject to the current regulation.

7.6. Processing the application

When a visa office receives a certificate of nomination under the provincial nominee class, the officer should proceed to issue medical instructions and carry out normal security screening procedures as soon as possible, provided a complete application has been received.

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Monitoring and compliance

Officers should request additional documentation or clarification from the applicant or the nominating province if they are not satisfied that all criteria will be met by the applicant.

If the nomination certificate is not a sufficient indicator that a foreign national can economically establish in Canada, an officer may substitute their evaluation of the likelihood of the foreign national to become economically established in Canada for the nominating certificate. Such a substitution requires that the officer consult with the government that issued the certificate and also requires the concurrence of a second, appropriately delegated, officer.

The intention to reside in the nominating province should be reaffirmed in all cases. This is especially important when it is anticipated that a significant time lag may occur between nomination and visa issuance.

Officers who have reason to believe that an applicant, whose nomination certificate was issued after September 2, 2008, was nominated on the basis of a passive investment, should proceed to interview the client and/or request additional documentation to satisfy R87(5), (6) and (9) requirements.

When all requirements have been met, the officer may proceed to issue the permanent resident visa.

The “Schedule 4A – Economic Classes – Provincial Nominees – Business Nominees” form

The Schedule 4A form has been developed to capture:

- background information about applicants nominated in a business, entrepreneur, self-employed or similar stream; and
- details of their business experience and proposed business activities in Canada.

Officers should remember that it is within the province’s mandate to make a determination as to the likelihood that a nominated individual will make an economic contribution to the province. The purpose of the information captured on Schedule 4A is not to encourage reassessment of the province’s nomination decision. Rather, the information provided on this form should be examined for consistency with the rest of the application and the applicant should be invited to address any concerns which arise. If the officer is concerned that the applicant may have provided different information to CIC than to the province, the province should be consulted. If the applicant possesses wealth which appears to be inconsistent with their business and personal history, the officer should request further clarification.

In contrast to federally-selected investors and entrepreneurs (R88(1)), there is no explicit legal requirement for provincial nominee applicants, even those applying in a business or similar stream, to show that their assets were legally obtained. As a result, until now, detailed information has not been collected about provincial nominees’ business experience and acquisition of assets. This has made it difficult at times to assess some aspects of admissibility. Schedule 4A is designed to address this gap. Applications should not be refused simply because the source of the applicant’s funds is unclear, nor should they be refused for non-compliance simply because the applicant refuses to reveal their source of funds. Since the *Immigration and Refugee Protection Act* (IRPA) does not require that the officer consider this information for selection purposes, it could be difficult to defend refusals based purely on a failure to provide information. However, all applicants, including provincial nominee class candidates, must establish that they are not inadmissible. In this regard, they should be required to account for their activities and the source of their funds when questions about admissibility arise and officers should insist on receiving satisfactory information. Operational instructions published in RIM 03-072 provide more detailed information; visa offices with questions about source of funds are welcome to consult National Headquarters (NHQ). NHQ will support refusals in cases where an officer is not satisfied as to the applicant’s admissibility and has provided the applicant with the opportunity to address these concerns.

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Changes in the family composition during processing

Under R87(2)(a), only the principal applicant must be named in the nomination certificate. Although many provinces also list the applicant's accompanying dependants on the certificate, there is no actual legal requirement for them to be listed. As a result, there is no need for a new or amended nomination certificate if the applicant's family composition changes during processing. As a courtesy, the visa office should inform the province of a change in the applicant's family composition but a new certificate should not be requested in these circumstances.

Changing immigration category

It sometimes happens that an applicant who has applied in another category, but whose application is not yet in process, is nominated by a province. R10 requires that every application be made within one of the classes prescribed by the Regulations and there is no mechanism under the legislation by which the immigration category can be changed once an application has been submitted. In all cases, an applicant who wishes to be assessed in the provincial nominee class must submit an application in that class, along with the appropriate fee.

Therefore, an applicant who has applied in another category and who is subsequently nominated by a province, must submit a new application as a provincial nominee.

- If the initial application has not been paperscreened, the processing fee can be credited toward the new provincial nominee application instead of being refunded (as per operational instructions published in RIM 06-026).
- If the initial application has been paperscreened, no refund is possible.
- If the applicant does not wish to withdraw the initial application, processing on both applications may continue but only one permanent resident visa can be issued to an applicant. Before the processing of an application can be finalised, any other permanent residence applications in process submitted by the same applicant must be withdrawn.

7.7. Processing special cases

Based on the general provisions of [Federal-Provincial-Territorial agreements](#) concerning provincial nominees, a nomination certificate is considered to be a determination that the applicant's admission will be of economic benefit to the province and that the applicant will be able to become economically established in Canada. Generally speaking, it is not the policy intent that visa officers look behind the provincial nomination decision. Situations do arise, however, in which the visa officer is not fully satisfied of the applicant's ability to become economically established, despite the nomination certificate. Two common scenarios are:

Overaged dependants

As in other immigration classes, a provincial nominee principal applicant may wish to include in their application a son or daughter who does not meet the definition of "dependent child" and who, for that reason, cannot be included as a family member. In some cases the nominating authority may nominate the overaged dependant child in their own right. Where the dependant has no work experience and may not have knowledge of either official language, the possibility of a refusal using substituted evaluation arises, on the basis that the applicant's ability to become economically established has not been demonstrated.

There is no definition in the legislation of "become economically established," leaving the term open to interpretation. There is also no indication of the exact moment when an applicant must become economically established: immediately upon landing or after an initial period of adjustment. However, it is clear, from the way in which the term is used throughout the economic classes, that to become economically established means to join and participate in the labour market in Canada. It is also clear that the selection criteria do not apply to the provincial nominee class in the same way as they apply to federal skilled workers and that it is the overall intention of the legislation and the Federal-Provincial-Territorial agreements to allow the provinces some latitude in their nomination decisions. For all of these reasons, visa officers should, on a case-by-

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case basis, carefully evaluate the cases of overaged dependants nominated as provincial nominee candidates in their own right. They should refuse if they have strong reason to believe that the applicant is very unlikely to become economically established, even in the medium term and with the assistance of their other family members. On the other hand, it is consistent with the legislation to approve cases where there is some likelihood of successful settlement within a reasonable time.

If a visa is issued to an overaged dependant with no previous work experience, **it is vitally important to code the applicant as a new worker using NOC 9914.0**. Dependants with no previous work experience are the only provincial nominee applicants who should be coded as new workers. Coding them in this way makes it possible to monitor the number of such cases.

Individuals with no intention of joining the labour market

The most common scenario involves older individuals who have a close tie to the province which motivates them to retire there (usually, they have a close relative, such as a son or daughter, residing in the nominating province). Some individuals have stated to visa officers quite openly that they do not intend to join the labour market in the province. Others have stated that they intend to seek work or create a business, but have not been able to satisfy the officer that they have a genuine intention of doing so.

The provincial nominee class is defined in the legislation as an economic class where the applicant is assessed on the basis of their ability to become economically established. As noted above, to “become economically established” means, at a minimum, to support oneself by participating in the Canadian labour market. If the officer is not satisfied that the individual has the intention of participating and that they will be able to participate, the application should be refused. To “become economically established”, participation in the labour market must be in a way which allows the individual to fully support themselves, not merely contribute to the costs of their upkeep. This means that part-time or casual work would not normally meet the requirement to participate in the labour market in the sense it is intended here.

Such refusals are consistent with the legislation and policy intent and will be supported by NHQ.

Temporary resident visas and work permits

Applicants sometimes apply for temporary resident visas (TRV) to make exploratory trips to Canada. Some provinces require prospective applicants in certain categories to make such a visit before nomination can occur. Individuals applying for TRVs for such purposes are subject to the same requirements as persons travelling for other purposes. Applicants or their representatives have occasionally argued that if the visit is required by the province, the visa officer should assess only the admissibility of the applicant, not their bona fides. There is no legal basis whatsoever for this argument. Clearly, a TRV issued to facilitate an exploratory visit may be abused as easily as a TRV issued for any other purpose.

That being said, officers should apply the dual-intent provisions and be cognizant of the fact that an applicant who is likely to be nominated by a province may well be less motivated to abuse their visa than one who has fewer prospects of obtaining legal permanent admission to Canada. Officers must carefully consider all the information available to them and make a reasonable decision on the basis of that information.

[Section 5.27 of FW 1](#) deals with the issuance of work permits to provincial nominees. Under R204(c), work permits can be issued to prospective or actual provincial nominees. The applicant must present a letter from the province stating that they have been nominated and requesting a work permit. It is not necessary for the visa office to have received the nominee’s application for permanent residence before issuing a work permit. Spouses of provincial nominees are entitled to open work permits regardless of the skill level of the principal applicant.

7.8. Refusing the application

There are three bases upon which a provincial nominee who meets all statutory admissibility requirements can be refused a visa:

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- The officer has reason to believe that the applicant does not intend to live in the province that has nominated them;
- The officer has reason to believe that the applicant is unlikely to be able to successfully establish economically in Canada; and
- The officer has reason to believe that the applicant is participating in, or intends to participate in, a passive investment or an immigration-linked investment scheme as defined in R87(5) to R87(9) of the Regulations.

In each case, the officer must have some evidence to support this belief and overcome the presumptions implied by the provincial nomination. Every provincial nominee agreement obliges the immigration officer to consult with an official of the nominating province regarding the intention to refuse before the refusal is actually made.

If the officer, after consulting with the province, still intends to refuse, R87(4) requires that a second officer concur with the decision to refuse, before it can be made official. Both officers' names should be clearly recorded in the CAIPS notes.

Inadmissibility

Like all other applicants, provincial nominees must not be inadmissible to Canada. In order to follow procedural fairness, officers must make applicants aware of any concerns about their admissibility and must provide them with an opportunity to address those concerns. Responsibility for the assessment of inadmissibility for the purpose of IRPA is solely that of the federal government; there is no need for consultation with the nominating province before refusing an application on the basis of inadmissibility. The province should nonetheless be copied on the refusal letter.

If the nominating province provides input directly or via the applicant in response to a procedural fairness letter addressed to the applicant, that input should be considered along with the applicant's own input. Provincial input is, however, not determinative; the decision must be rendered by the visa officer.

Note: All extrinsic information, including information received from the province, must be disclosed to the applicant if it will be considered negatively by the visa officer. The applicant should be given an opportunity to respond.

Inadmissibility for misrepresentation (A40)

The application of A40 in provincial nominee cases does not differ substantially from procedures in all other immigrant cases. The nominating province should receive a copy of any procedural fairness letter and the applicant should be aware that the province has been provided with a copy. If the applicant provides information which addresses the officer's concerns in a satisfactory way, processing can resume. If the officer's concerns are not adequately addressed by the applicant, the officer can proceed to a refusal in the same way as in any other immigration class and send a copy of the refusal letter to the nominating province (as instructed below).

In some cases, the nominating province may wish to withdraw the nomination certificate but where a visa officer is satisfied that misrepresentation has occurred and the applicant is found inadmissible under A40, the case can be refused whether or not the nomination certificate is withdrawn. Nevertheless, before invoking A40, visa officers must carefully assess the relevance and materiality of the misrepresentation. Visa officers should consult International Region/RIM at CIC-NAt-operational-RIM-TFW@cic.gc.ca.

Refusal letters

In all cases, refusals should be communicated to the applicant in writing, **with a copy to the nominating province**. Note that in any case where a refusal is based on the lack of (or withdrawal of) a provincial nomination certificate, the legal reference should be to R87(2).

Refusal letters addressed to provincial nominees should never cite A20(2). This subsection is specific to Quebec cases only.

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7.9. Becoming a permanent resident

To become a permanent resident, any foreign national outside Canada needs to present their permanent resident visa at a port of entry to Canada.

As per policy described in Section 5.1 of this chapter, applicants whose permanent resident visa is issued while they are in Canada with a valid temporary resident status may:

- contact the Call Centre to request an appointment at a local CIC office to become a permanent resident at that location; or
- leave Canada and become a permanent resident upon re-entry to Canada at a port of entry.

The template letters that accompany the permanent resident visas for provincial nominees must be amended by the visa offices to include the following paragraph:

Please note that if you are already in Canada and have a valid temporary resident status, you now have the option of obtaining your permanent resident status in Canada as opposed to leaving Canada and re-entering at a port of entry. Please contact CIC's Call Centre at 1 888 242-2100 as soon as possible to arrange an appointment with the Citizenship and Immigration office nearest to your place of residence. (You cannot call this number if you are outside Canada.)

8. Coding provincial nominees

All applications submitted under the provincial nominee class must be clearly identified to allow for quality assessment and control.

Table 3 - Immigration category code

| CODE | DESCRIPTION |
|------|--|
| PV2 | Provincial nominee processed abroad *Synthetic NOC Codes should be used as instructed in CAIPS Coding Aid, namely for Investors (0001.0) and Entrepreneurs (0002.0). New Worker (9914.0) should apply to overage dependants without work experience and with a separate nomination certificate. |

There has been some inaccurate coding of provincial nominees that has had a negative impact on our ability to assess the success of the program. The two most frequent problems are as follows:

- While provinces have different reasons for nominating individuals (some because of occupational skills they possess, some because of their business acumen, some because of their willingness to settle in under-populated regions), **all** provincial nominees are to be considered members of the provincial nominee class for federal coding purposes. Some officers have in the past erroneously coded provincial nominees with business skills as entrepreneurs or self-employed, for example. The immigration category in CAIPS must be PV2 for all applicants who are being selected at a visa office on the basis of a certificate of nomination by a province.
- The nominating province should always be accurately coded and this coding must remain unchanged throughout the landing process. There have been many cases where provincial nominees nominated by one province indicate upon landing that they are destined to another province, and Canada Border Services Agency officers have taken it upon themselves to change the province of destination on the file. It has been found that in most of these cases, the new permanent resident is simply visiting friends or family on their way to their new home, and most do end up reporting to and settling in the province that nominated them.