

New Canadian scheme to woo H-1B visa holders likely to appeal to a section of Indians

Ishani Dutttagupta / TNN / Jul 7, 2023, 20:48 IST



The Canadian government recently unveiled a scheme to woo US H-1B work permit visa holders and, not surprisingly, this has been received with enthusiasm by thousands of Indians who are in the US and stuck on long green card queues.

According to Canada's new tech talent strategy, Canadian minister of immigration, refugees and citizenship Sean Fraser, has announced a new stream, starting July 16, to allow 10,000 H-1B visa holders from the US to move to Canada with an open work permit. The initiative also extends to their family members, providing them with study or work permits.

Even though there is a great deal of interest about this Canadian scheme, especially among Indians who have been waiting for many years on H-1B visas on long green card queues, there are some doubts about the full details.

According to the terms of the scheme, the H-1B visa holders and their immediate families will be allowed to apply for Canadian work permit for up to three years. The work permits are open in nature, meaning that the applicants do not need an existing job offer in hand. They can apply the work permit and then explore employment opportunities in Canada with Canadian employers or they may continue to work remotely or their US employer from Canada.

"This will be particularly advantageous for Indian H-1B holders who are nearing their six year H-1B max out limit or those who have not reached certain milestones towards their permanent residency path, because they

will have the option to relocate to Canada and continue working for their US employers. They will be able to work in the same time zone,” says Mishita Jethi, partner and attorney at the New York office of law firm Chugh, LLP.

Additionally, she says, the spouses of the primary applicant will also be eligible for a work permit which is a big advantage since dependent spouses of H-1B visa holders do not have automatic work authorization in the US, unless the H-1B holders have reached specific milestones toward their permanent residency path. “Another advantage is that the work experience gained while working in Canada may be used by these applicants to gain points towards Canadian permanent residence,” says Jethi.

However, immigration lawyers, experts, employers and likely beneficiaries of this visa feel that there is still lack of clarity on this newly announced Canadian pathway. “The Canadian government has not yet announced how this will work. When they say H-1B visa holders who cannot continue to be in the US, it is not clear if they mean someone who is in H-1B status or must the person have a valid visa on the passport,” says Mumbai based immigration attorney Poorvi Chothani. However, she adds, that for Indians, this will be a good way to remain in North America even though not in the US.

“For US employers, this will be an easy, temporary solution to have their H-1B workers ‘parked’ in Canada, which could be in parallel time zones. With some creative employment structures with affiliate companies in other jurisdictions, some candidates might even qualify for an L-1 work permit visa even though the US employer has no entity in Canada. This option is even more attractive in a post pandemic world where the opportunities and ability to work remotely have been tested and widely accepted,” Chothani added.

Overall, Canada’s open work permit stream is being seen as a positive development, particularly for many Indians who are waiting on long green card queues in the United States.

“By offering an open work permit stream, Canada is providing an opportunity for skilled professionals, including those with expertise in the technology sector, to explore employment options and potentially settle in Canada. This initiative aims to attract highly skilled individuals who can contribute to the country’s economy and innovation. It highlights Canada’s efforts to create opportunities for international talent, providing an alternative path for those seeking employment and potential immigration prospects,” says Kohinoor Dev Roy, regulated Canadian immigration consultant (RCIC), at Edmonton-based Destination North Immigration Consulting.

Immigration experts and potential applicants are now waiting for the Canadian government to work out and announce official guidelines on specific eligibility criteria, application process, and other details of the open work permit stream.

“To bypass never ending hurdles of the US immigration system, many companies have been relocating their employees on H-1B visa up north to Canada for last many years. It is great to see a thriving economy such as Canada take cognizance of the difficulties faced by H-1B visa holders in the United States and introduce a programme specifically for them. They have adjusted their immigration system to reflect the country’s economic needs and show that immigrants must be treated with dignity and respect which in turn is a win-win situation for both,” says Neha Mahajan, business development and outreach manager at the New York and New Jersey offices of law firm Chugh, LLP.

“Apart from offering stability of the work permit for the entire family, the new Canadian system has ensured security of children of H-1B visa holders who would otherwise aged-out in the current H-1B programme in the

US. It also seems like a great option for those H-1B holders who are the verge of losing their visa and can no longer stay in the US,” Mahajan adds.

There are, however, some problems about the Canadian scheme which could dampen the enthusiasm of Indians in the US on H-1B visas. Many of the Indians stuck in the US on long green card queues have an H-1B visa with an approved I-140 (green card) application. These H-1B visa holders are employed, they and their spouses are likely to have work authorization in the US, enabling both to work, says Sanjay Kumar (name changed on request), who went to the US on a student visa for masters course and now works as a tech consultant on his optional practical training period.

“The pay is significantly higher in the US, and taxes are marginally lower compared to Canada. Therefore, unless there is a significant career jump or progression, where the H-1B holder is offered a move from a managerial role in the US to an executive position in Canada, I do not see this scheme enticing Indians to leave the US and move to Canada, he says.

However, with thousands of lay-offs by technology companies in the US; Indians on H-1B visas, who have been impacted by job losses, could benefit from the Canadian scheme. “If an H-1B visa holder is laid off by their employer in the US, this scheme provides a golden opportunity. This is because of the 60-day time limit given to the H-1B visa holder to find another employer. If they are unable to find an employer during this grace period, then are they likely to consider the Canada option,” Kumar says.

Ajay Sharma, president of immigration consultancy firm Abhinav Immigration Services, too, feels that the Canadian option will appeal only to a very small section of Indians who are in the US. “Even though many Indians on H-1B visas are waiting on green cards queues, the salary disparity for similar jobs between the US and Canada may not be attractive since US is a much bigger market for IT professionals. Besides, cities in the US are more vibrant than Canadian ones and most Indians who have jobs in the US are likely to prefer to wait on green card queues for permanent residence rather than move to Canada and hunt for jobs,” Sharma says.

Advantages of the Canada open work permit for H-1B visa holders scheme

Source: Chugh, LLP & Destination North Immigration Consulting

The scheme opens up new avenues for skilled Indian professionals, including those facing challenges with long green card queues. It allows them to explore employment opportunities in Canada, particularly in sectors like technology and engineering.

The scheme provides a back-up option for Indian H-1B visa holders who want to switch employers or have been laid off in the US.

The H-1B visa holder with an approved I-140 (green card) application could always move back to the US before their priority date becomes current if they can find an employer at any point without having to go through the lottery again.

The H-1B visa holder without an approved I-140 (green card) application can also move back to the US to capture the remaining duration of their H-1B visa.

Working in Canada under an open work permit provides Indians with an opportunity to gain valuable international work experience. It can also open doors to future career advancements and opportunities.

The open work permit stream can serve as a potential pathway to permanent residency in Canada. By working in Canada and gaining Canadian work experience, individuals may become eligible to apply for immigration

programmes, such as the express entry system or provincial nominee programmes, which prioritise candidates with Canadian work experience.

Canada is known for its high standard of living, quality of education, healthcare facilities, and social benefits. Indians who migrate to Canada under this scheme can benefit from these aspects, ensuring a better quality of life for themselves and their families.

Canada is also known for its multicultural society and welcoming attitude towards immigrants. Indians who choose to move to Canada can experience a diverse and inclusive environment that values different cultures, languages, and traditions.

The open work permit stream may also provide opportunities for Indians to reunite with their families. Canada offers various immigration programmes that facilitate family sponsorship, allowing eligible individuals to bring their spouses, partners, and dependent children to join them in Canada.

Disadvantages

Relocating to a new country comes with its own set of challenges. H-1B visa holders and their families who have been in the US for many years will have to become accustomed to a new way of life in Canada.

Depending on the province where these applicants eventually reside, they may have to learn a new language, since Canada has two official languages – English and French – and the Province of Quebec primarily uses French as their language of communication.

The scheme is specifically targeted at American H-1B visa holders, which means it may not directly benefit other categories of Indian professionals who are facing challenges in the US or looking for alternative immigration options.

Canada, like any other country, has a competitive job market. While the scheme opens up employment opportunities, there is no guarantee of finding immediate or suitable employment.

The current Canadian job market and availability of technical jobs is of some concern.

While Canada offers a high standard of living, it is accompanied by a relatively higher cost of living compared to some other countries. Individuals need to consider factors such as housing, healthcare, education, and general expenses when assessing the financial implications of moving to Canada.

Immigration policies and regulations can evolve over time. There is always the possibility of future changes or amendments to the programme that could impact eligibility criteria, application processes, or the number of available opportunities.