



YUKON NOMINEE PROGRAM POLICY

DM Approval:

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Effective Date: June 1, 2017

GENERAL INFORMATION

The Yukon Nominee Program (YNP) is part of the Yukon Immigration Strategy and is an economic immigration program designed to support Yukon's labour market. The program is operated by the Yukon government in partnership with Immigration, Refugees, and Citizenship Canada (IRCC) under the 'Agreement for Canada-Yukon Co-operation on Immigration'.

The YNP contains three streams: Skilled Worker, Critical Impact Worker, and Business Nominee. All three streams are administered by the Advanced Education Branch of the Department of Education.

The Skilled Worker and Critical Impact Worker streams of the YNP supplement the local labour force with qualified foreign workers when Canadian citizens and permanent residents are not available.

PURPOSE

The purpose of the YNP is to help the Yukon government respond to labour market needs in a sustainable way, while at the same time ensuring that job opportunities are safeguarded for Yukoners and other Canadians.

The purpose of this policy is to provide direction, principles, and criteria for how decisions under the YNP will be made by the Department of Education for the Skilled Worker, Critical Impact Worker and the Express Entry streams. For information regarding the Yukon Business Nominee Program (YBNP), please refer to YBNP Operations Guide available at <http://www.immigration.gov.yk.ca/>

DEFINITIONS

'Applicant' means the employer submitting an application under the YNP.

'Business' means the business activity for which the application has been submitted and for which a business license has been obtained.

"Employer" means a person, firm, corporation, contractor, or other association or organization in Canada which:

Indicates the intention to have an employer-employee relationship with a person who is a foreign national, and,

Has an employer-employee relationship with respect to employees, as indicated by the fact that it may hire, fire, pay, supervise, or otherwise control and direct the employee in the material details of how their work is to be performed.

'Foreign national' means a person who originates from another country and who is not a Canadian citizen or a permanent resident.

'Nominee' means a foreign national whose application under the YNP has been approved by the immigration unit of Yukon Education.

POLICY STATEMENT

1. YNP Eligibility Criteria

1.1. Employers

To be eligible to make an application under the YNP, an employer must meet the following criteria:

- 1.1.1. the employer must be a permanent resident of Canada;
- 1.1.2. the employer must have owned and operated in Yukon:
 - 1.1.2.1. a registered Yukon business with an office in Yukon for at least one year prior to the application to the YNP; or
 - 1.1.2.2. an industry association with an office in Yukon for at least one year prior to the application to the YNP; or
 - 1.1.2.3. a municipal, First Nation or territorial government for at least one year prior to the application to the YNP; or
 - 1.1.2.4. a non-profit organization for a minimum of two years, with funding secured for at least one year following the application to the YNP.
- 1.1.3. the business must operate all year round and the employer must have owned and operated the business for a full year prior to the application;
- 1.1.4. fraud, misrepresentation and misleading information by an employer at any point during their interaction with the Yukon Nominee Program will disqualify them from participating in Yukon immigration programs and/or result in their expulsion from the program.
- 1.1.5. the application must be signed by the employer or an employee of the business authorized by the employer;
- 1.1.6. the employer must have current and valid required licenses in accordance with all applicable federal, territorial, and municipal requirements;

- 1.1.7. the employer must show proof that the offer of employment complies with YNP standards outlined in the Yukon Nominee Program Application Handbook relating to wages and low income cut-off standards, duration of employment, other applicable standards, and with all of the minimum requirements of the *Yukon Employment Standards Act*;
- 1.1.8. employers may not be under investigation by the Department of Education or any federal, territorial or municipal government departments/agencies for violation of the terms of a TPA or any other matter including human rights violations, labour relations violations, tax violations and so on;
- 1.1.9. the employer must demonstrate a valid labour market need for the occupation being nominated and show proof that qualified Canadian citizens or permanent residents were not available for the position. (The employer must follow the practices outlined in the Yukon Nominee Program Application Handbook about contacting local employment agencies, First Nations and other groups.)
- 1.1.10. the position must have been advertised for a minimum of four weeks in the three month period immediately preceding the application. NOTE: The advertisement to actively seek qualified Canadians and permanent residents must remain posted until a decision is issued by YNP;
- 1.1.11. no qualified or suitable Canadian or permanent resident workers working in the same occupation for the employer have been laid off by the employer within the last 12 months, unless the employer has offered to recall the workers and they have rejected the offer;
- 1.1.12. the employer is not banned from the YNP or by IRCC;
- 1.1.13. the employer must verify the prior work experience and qualifications of foreign nationals prior to submitting an application to the Skilled Worker Program or the Critical Impact Worker Program; and
- 1.1.14. the employer has not, directly or indirectly, charged or collected a fee or received any financial gains in nominating a foreign worker.
- 1.1.15. the following types of business are not eligible:
 - bed and breakfasts (less than 10 rooms)
 - hobby farms (a farm where the operator does not rely on farming to provide the bulk of their income or to be the centre of their work routine)
 - home based businesses
 - taxi-cab companies
 - businesses owned and operated by active Yukon Business Nominees

- passive investments
- home-based distribution operations
- business consultation and personal services
- real estate
- holdings companies

1.2. Guaranteed Employment Offers

A guaranteed employment offer made under the YNP must meet the following criteria:

- 1.2.1. for the purposes of the Yukon Nominee Program, only the base hourly wage advertised for the job constitutes the annual income.
- 1.2.2. gratuities, overtime, bonuses, free rent and other forms of compensation are not counted as income; however, if such perks are regularly included with the position, they must be stated in the job advertisement
- 1.2.3. it must be permanent full-time (35-40 hours/weekly) year-round employment;
- 1.2.4. the wage must match the median wage set by the Government of Canada for Yukon (in the 'New Wage Structure' established by Employment and Social Development Canada), and any variations must follow Canada's wage structure for foreign workers;
- 1.2.5. the wage must be sufficient to support the nominee and his or her dependents, as determined by Statistic Canada's low income cut-off standards;
- 1.2.6. it must include health insurance, free to nominees, that gives similar coverage to what a Yukon resident receives under the *Health Care Insurance Plan Act* until the nominee is eligible for an insured health card under the *Health Care Insurance Plan Act*, and
- 1.2.7. it must not conflict with existing collective bargaining agreements.

1.3. Nominees

To be approved as a nominee, a foreign national must meet the following criteria (which are consistent with guidance received from IRCC):

- 1.3.1. if they are in Canada at the time of application, they must have legal status in Canada which excludes visitor or refugee status;
- 1.3.2. foreign nationals who are currently in Canada, must have a valid work permit at the time of the YNP application;
- 1.3.3. a foreign national under implied status is not eligible to apply for the YNP;

- 1.3.4. they have not previously been refused immigration to Canada;
- 1.3.5. fraud, misrepresentation and misleading information by a foreign national at any point during their interaction with the Yukon Nominee Program will disqualify them from participating in Yukon immigration programs and/or result in their expulsion from the program they belong to. Advanced Education will notify IRCC in writing of any such occurrence.
- 1.3.6. if they are a foreign national in Canada under a student visa, they must demonstrate that they have completed all of the requirements of their academic program before being considered for the YNP (the minimum period for the academic program is 12 months);
- 1.3.7. they must supply notarized documentation to prove their education, work experience, family status (including all dependents) and other requirements of the YNP: marriage or divorce certificates, separation documents, permission for any dependent to leave the country (if divorced or separated), common law declaration, birth certificate, passport, custody documents, and adoption documents;
- 1.3.8. they must provide proof of qualifying relevant work experience in the job offered; acquired within the 10-year period preceding the date of application
 - 1.3.8.1. Any period of employment during which the foreign national was engaged in a full-time study shall not be included in calculating a period of relevant work experience. Co-op work experience does not count towards relevant work experience.
 - 1.3.8.2. a minimum of the equivalent of 6 months full time for a 'critical impact worker' (National Occupation Code (NOC) Matrix skill levels C or D); or
 - 1.3.8.3. a minimum of the equivalent of 12 months full time for a 'skilled worker' (NOC Matrix skill levels O, A, or B);
- 1.3.9. they must meet language standards established by IRCC for immigration. The level of required language competency is determined by the skill level for the position, as defined in the YNP Application Handbook;
- 1.3.10. they must have a guaranteed job offer in Yukon and the job offer must meet the economic (wages, low-income cut-off requirements) and other criteria necessary for nomination;
- 1.3.11. they must intend to settle permanently in Yukon, and submit their permanent residence application to IRCC within three to six months of starting work; and
- 1.3.12. the nominee cannot be charged by the employer with any fees for recruitment services and the employer cannot accept any payment or benefit for hiring the nominee.

2. Approval of Applications under the YNP

When a nomination is approved, the employer, the nominee and Advanced Education will sign a Tripartite Agreement (TPA) that outlines each party's rights and responsibilities during the term of the nomination.

A nomination is valid for a period of twelve months. If the nominee does not arrive in Yukon within that period, the nomination will be revoked.

Advanced Education must complete the assessment of an application from an employer before proceeding to subsequent applications from the same employer.

2.1. Extension of Approved Nominations

A nominee may request an extension of the nomination if they have applied for but not yet received permanent resident status from IRCC. The request for nomination extension must be made at least 4 weeks prior to the expiration of the nomination.

The nominee must apply to extend a nomination in writing, clearly indicating the reason/s why the extension is being requested.

The employer must provide written confirmation that the position for which the person was nominated still exists at full-time hours and that the nominee continues to occupy the position.

For an extension to be approved, the nominee must provide evidence that they have applied for permanent resident status and that the employer continues to support their nomination

The Department of Education will not approve more than one request for an extension of a nomination. No extension will be given if the nominee has not applied for permanent resident status.

2.2. Monitoring Approved Nominations

The Department of Education is responsible for monitoring approved nominations in order to ensure that the requirements of the YNP are being met, including investigating and assisting to resolve any complaints as required.

Primary monitoring will be required three months after the signing of the TPA. A follow-up monitor will be done seven months after the first monitor, or as often as deemed necessary by Advanced Education.

The names of employers found in violation of any terms of the TPA as a result of investigations conducted by the department or any federal or territorial government departments/agencies will be disclosed to the public. The employer may be banned from the YNP for a period to be determined by the department.

3. Denial or Revocation of Applications under the YNP

3.1. Denial of Applications

It is the responsibility of the applicant and foreign national to provide accurate, credible and verifiable information. Any false statements, concealment of a material fact or disregard for the Tripartite Agreement may result in the applicant or the foreign national's exclusion from the Yukon Nominee Program in the future, and notice given to IRCC.

Applications will be denied in the following circumstances:

- 3.1.1. the applicant does not meet the eligibility criteria of the YNP;
- 3.1.2. the foreign national is in Canada without a valid work permit;
- 3.1.3. the foreign national does not meet the eligibility criteria of the stream under which the application is being assessed (including language skills);
- 3.1.4. the job offer does not meet the eligibility criteria of the YNP;
- 3.1.5. the employer fails to demonstrate a valid labour need for the occupation being nominated;
- 3.1.6. the foreign national fails to clearly demonstrate that he or she has the training, experience, certification, education and language proficiency necessary;
- 3.1.7. the foreign national fails to clearly demonstrate the ability to establish himself or herself economically and the intention to settle permanently in Yukon;
- 3.1.8. the applicant has not provided sufficient credible documentation required to complete a full assessment of the application;
- 3.1.9. verification of education and previous related work experience is not confirmed within the timeframe requested;
- 3.1.10. any of the information provided, including documents and statements, is determined to be fraudulent;
- 3.1.11. the foreign national has not met specific requirements such as licensing, certification and/or a valid offer of employment for the assessed occupation;
- 3.1.12. the applicant has outstanding regulatory issues, or is otherwise not in good standing with federal, territorial and/or municipal regulatory agencies;
- 3.1.13. the applicant has previously been prohibited from participating in the YNP, and that prohibition is still in effect;
- 3.1.14. approval would affect any labour dispute or adversely affect employment or training opportunities for Canadian citizens or permanent residents of Yukon;

- 3.1.15. deadlines for submission of documents and other information have not been met and alternate arrangements have not been made; or
- 3.1.16. the application is a resubmission of a previous submission, without significant change in content or circumstances.

When an application is denied, Advanced Education will notify the applicant in writing and will include the reason(s) for the decision.

3.2. Administrative Review

When an application is denied, the applicant can request a formal review provided that:

- 3.2.1. they submit a written and signed request within thirty days of the date of the decision;
- 3.2.2. the request includes sufficient detail of the reasons why the applicant believes the application should be approved; and
- 3.2.3. the request is based on the information provided during the application process, and not on new or additional information.
- 3.2.4. The formal review will be conducted by the Manager, Immigration in Yukon Education who will:
 - 3.2.4.1. direct a new assessment if it is determined that the application was rejected in error; or
 - 3.2.4.2. confirm the decision to deny the application, with the final approval of the ADM of Advanced Education, if it is determined that the application was rejected in accordance with the program criteria, procedures and policy. A written decision will be provided to the applicant within 14 business days of receipt of the request for review.

3.3. Revocation of Nominations

The Department of Education may revoke a nomination for any of the following reasons:

- 3.3.1. the nominee is not present in Yukon within the original 12 month nomination period;
- 3.3.2. fraud and/or misrepresentation by the nominee or the employer occurring either before or after the nomination was approved;
- 3.3.3. failure of the nominee or the employer to sign the TPA within 14 days of the arrival of the foreign national to Canada, or of the approval of the application if the foreign national is already in Canada;

- 3.3.4. failure of the nominee or the employer to comply with the TPA outlining each party's rights and responsibilities during the term of the nomination;
- 3.3.5. economic factors outside of the nominee's control such as layoffs, the employer's financial difficulties, strike action, bankruptcy, or sale or closure of the employer's business;
- 3.3.6. the nominee is convicted under any federal, territorial, provincial, municipal and/or international laws;
- 3.3.7. the nominee resigns without reasonable cause;
- 3.3.8. the nominee is fired with cause;
- 3.3.9. rejection of the nomination by IRCC; and
- 3.3.10. any other grounds as determined by the Department of Education.

3.4. Revocation Actions

When the Department of Education decides to revoke a nomination it may take any of the following actions:

- 3.4.1. allow the nominee ninety days to seek other employment (a new nomination) in order to continue with their permanent resident application;
- 3.4.2. withdraw the nomination and inform IRCC; or
- 3.4.3. any other action that is just and reasonable in accordance with the IRPA and YNP policies and guidelines.

4. Investigations and Consequences of Violations of Yukon Nominee Program

The Government of Yukon is committed to upholding the integrity of the YNP and ensuring that qualified Canadians and permanent residents are given the first chance at available jobs. Abuse of the program harms the local economy and labour market, increases the administrative workload for the Department of Education and the federal government and deters Canadians and permanent residents from applying for jobs.

In addressing complaints from either nominees or employers, the Immigration Unit staff who receives the complaint will advise the Manager of the nature of the complaint, and consult on the appropriate course of action depending on the nature of the complaint. Essentially all complaints can be categorized as requiring internal resolution, which tend to be relatively simple issues which can be resolved in the workplace, or external resolution, issues which are likely complex and may involve other agencies or branches of government. Based on the results of the inspection or investigation, consequences that are within the purview of the YNP will be established by the Assistant Deputy Minister.

Formal investigations are not carried out in relation to address minor issues or concerns, nor are they used when all relevant information is readily available to program staff. Under the YNP, formal investigations are typically carried out to gather information

about alleged violations of the terms and requirements of the program when there is incomplete or conflicting information about the matter in question.

Immigration Unit staff may conduct their own investigation (internal), or they may refer the matter to another appropriate agency (external). Advanced Education works in partnership with relevant agencies (e.g. Canada Border Services Agency, IRCC, Employment Standards, RCMP, Yukon Human Rights Commission, Yukon Workers Compensation and Health and Safety Board) to address complaints and when appropriate conduct investigations.

When a matter is referred to another agency for investigation, the investigation will be conducted in accordance with the rules and procedures established by that agency.

When an internal investigation is undertaken by Immigration Unit staff, the Manager, Immigration Unit will determine any appropriate interim measures to address the situation, which may include placing any YNP pending applications from the employer on hold until the investigation is completed. The employer will be notified of any interim measures being taken.

When the Immigration Unit is notified that an external investigation is underway, the Manager, Immigration Unit in consultation with that agency will determine any appropriate interim measures to address the situation. This may include placing any YNP pending applications from the employer under investigation on hold until the investigation has been concluded, provided that the employer has been notified that an investigation is underway.

Consequences can be established whenever the Department of Education becomes aware of a violation including during the application process, during the nomination period or after permanent residence is obtained and up to six years after the YNP application is made.

If the department receives a complaint about an employer who is in contravention of a federal, territorial or municipal law, the appropriate body will be informed.

4.1. Categories of Violations

There are three categories of violations:

Type A — minor violations such as a short delay in providing documents.

Type B — moderate violations such as not making all required deductions from a nominee's pay.

Type C — serious violations such as inadequate wages, less than minimum hours of work or receiving payment for accepting a nominee.

4.2. Application of Consequences for Violations

In assessing the penalty, the Assistant Deputy Minister will consider the category of violation, whether this is a first or repeat offence and the severity of the offence. Severe

offences will include abuse of a nominee or foreign national and deliberately providing false information. The Assistant Deputy Minister will determine the length of the ban.

4.3. Length of bans from YNP

An employer found to be non-compliant with YNP requirements can be banned from the program for a maximum of five years even if more than one violation occurs.

4.4. Publication of bans from YNP

When an employer is found to be non-compliant and banned from YNP, their name, address, nature of violation and length of ban will be published on the YNP website.

4.5. Procedural Fairness

Internal investigations conducted by the Immigration Unit under the Yukon Nominee Program will be conducted with procedural fairness in order to ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of all those involved in the investigation and enhances public confidence in the process.

When external investigations are conducted by another agency, the rules and procedures established by that agency will apply to the investigation.

There are three key principles of fairness that guide investigations conducted by the Immigration Unit under this policy:

- People have a right to be heard: they must have a fair opportunity to present their case whenever their interests might be adversely affected by a decision;
- The decision must be made by someone free of bias;
- The decision must be based on evidence, not on speculation or suspicion, and the decision must be communicated in a way that makes clear what evidence was used in making the decision.

When internal investigations of employers are conducted by the Immigration Unit under the YNP, employers are entitled to:

- receive timely and appropriate communication related to the investigation from the department;
- have sufficient notice of any investigation procedures being brought forward that involve their business (reasonable attempts will be made to accommodate all relevant schedule);

- be provided with all the information deemed relevant to their case, both positive and negative;
- be allowed to bring a person of their choice to any investigation meeting to assist them and be able to ask for a break in the proceedings at any time in order to gather their thoughts or better prepare their case;
- be allowed to present all evidence they deem relevant to make their case; and
- and receive a written statement or decision as to the outcome of the investigation.

Those involved in the investigation on behalf of the department must be free from inappropriate bias, and any person making an administrative decision during or following an investigation must have sufficient expertise to be able to understand and address the issues before them.

The Department of Education will properly identify and maintain all records of decisions and communications related to investigations.

EXCEPTIONS

The Assistant Deputy Minister will consider all the circumstances impacting the employer when non-compliance becomes evident. Employers will not be unfairly punished for circumstances beyond their control such as changes to federal or territorial laws.

ROLES AND RESPONSIBILITIES

Employees of the Department of Education Immigration Unit are responsible for making decisions on applications made under the YNP, monitoring nominees and workplaces for compliance with the requirements of the YNP, and making recommendations to IRCC about granting permanent residence status to nominees.

Employers, foreign nationals, and nominees are responsible for complying with all of the requirements of the YNP.

APPLICATION

This policy applies to all staff of the Department of Education and all employers, foreign nationals, nominees and others who participate in the YNP.

EXCEPTIONAL CIRCUMSTANCES

In situations where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or an unintended result, the decision may be based on the individual merits and justice of the situation.

Such a decision will be considered for that specific case only and will not be precedent setting.

EFFECTIVE DATE

This policy is effective June 1, 2017.

LEGISLATIVE AND POLICY REFERENCES

Immigration and Refugee Protection Act (Canada) and its regulations

Agreement For Canada – Yukon Co-Operation On Immigration

Yukon Nominee Program Application Handbook

Occupational Health and Safety Act

Yukon Employment Standards Act

HISTORY

Yukon Nominee Program Policy, effective June 1, 2013; amended effective January 1, 2014; amended effective September 1, 2015; amended effective November 1, 2015; amended effective August 5, 2016; amended effective January 24, 2017; amended effective June 1, 2017.