

# Recruiting High Skill Labour in North America: Policies, Outcomes and Futures

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## ABSTRACT

This article compares Canadian and US recruitment of highly skilled workers, defined by educational, skill, and occupational criteria. Analysis shows that Canada disproportionately recruits skilled workers as legal permanent residents whereas family reunification dominates in the US. But such contrast ignores the large temporary skilled worker flows to the US and the on-going reliance on them, or the growing use of temporary labour in Canada, including skilled workers. Data is presented on the admission of skilled migrants; recent and future policy developments are discussed. Comprehensive immigration reform is back on the US agenda with potential to increase the migration of skilled immigrants, to utilize a point system for some, and to continue the role of employers in the H1B visa programme. Canada has recently moved to a model of high skill labour recruitment that is characterized by decentralized selection mechanisms, and is demand driven and employer instigated.

## POLICY IMPLICATIONS

- In studies of high skill international worker flows, it is insufficient to focus only on permanent resident policies; temporary worker programmes also offer entry to high skilled workers.
- Although skill can be defined by high education and professional or science based occupation, some countries seek skilled workers in the trades. New Canadian policy includes a Skilled Trades class.
- In the United States, the congressional system often produces incremental change on aspects of skilled worker policy. In Canada, the consolidation of power in the parliamentary executive is allowing substantial change in how skilled international workers will be recruited.

## INTRODUCTION

Comparisons of Canadian and American migration policies invariably begin with their differences. These discussions often suggest that unlike the United States, Canada aggressively and successfully solicits the permanent migration of highly skilled workers through its points system (Antecol et al., 2003; Borjas, 1993; Green, 1995; Reka, 2002). Canadian policy can be characterized as oriented to the accumulation of generic human capital (Challinor, 2011) whereas American policy focuses on family reunification, putting the permanent recruitment of highly skilled labour to one side.

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This article shows that such contrasts are both overly simplistic and becoming outdated. I compare the US and Canada with respect to permanent resident and temporary worker policies and flows, generating two conclusions. First, the depiction of Canada as more engaged in recruiting highly skilled labour instead of family members rests on comparisons of American and Canadian permanent immigration policies. Admittedly, Canada disproportionately admits more highly skilled workers coming to North America as legal permanent residents, but this focus risks ignoring temporary worker visas – the back door for the permanent migration of skilled workers in the US. Second, although admissions are much smaller than in the US, Canadian migration policy uses temporary workers to meet short- and long-term labour demands; both countries utilize temporary high skill migration to provide labour flexibility and attract high skilled permanent residents.

I then discuss recent policy developments, suggesting that the recent and rapid Canadian high skill migration policy initiatives reflect parliamentary governance which permits consolidation of power in the executive. Consequently, Canadian policy is dramatically reconfiguring the policy levers used to admit skilled labour, largely under a labour demand model. In the United States, comprehensive immigration reform legislation appeared in 2013 although passage is by no means guaranteed in a congressional system. On both sides of the 49<sup>th</sup> parallel, these actual and potential changes challenge earlier contrasts between the US recruitment of skilled workers as a demand-driven, employer-led, market-driven model and the supply-side, points based, and human capital Canadian system (Challinor, 2011; Doornik, Koslowski and Thranhardt, 2009).

## HIGH SKILL IMMIGRATION IN CANADA AND THE UNITED STATES

### **Current policies governing legal permanent resident admissions**

Much has been written about the immigration policy shifts in Canada and the United States and about the factors that shaped them, including models of labour recruitment and inclusion in colonial America, shifting coalitions that made for strange bedfellows, the legacy of institutional contexts, the role of experts, the actions of Canadian civil servants, the drive for nation building through immigrant recruitment, and the international context which by the mid-1960s made national origins an untenable criterion of admissibility (Boyd and Alboim, 2012; Hawkins, 1972; Kelley and Trebbcock, 2012; Martin, 2011; Tichenor, 2002; Zolberg, 2006). A comprehensive country analysis of these policy levers over time is beyond the scope of this article, which instead emphasizes current and future trends and developments. However, without question, today's American and Canadian recruitment practices rest on foundational regulatory and legislative changes undertaken in the 1960s and 1970s which replaced national origins as the principle of admissibility with family reunification, economic contributions and humanitarian criteria (Boyd, 1976).

Currently, both countries continue to permit legal permanent resident status on the basis of family reunification, economic contributions, and humanitarian concerns; further, the admission of skilled workers (with tertiary education or specific training) is part of economic/employment based admissions. However, the proportionate shares of legal permanent residents entering under the auspices of the latter differ dramatically. As the 1965 US Act was motivated by the desire to facilitate family unification (Keely, 1971), an enduring legacy is the substantial in-flow of permanent residents on family based criteria. The US does not limit the admission of immediate relatives of US citizens, with almost 4.7 million admitted during 2001-2010. By comparison, slightly fewer than 2.7 million were admitted in the family preference categories and 1.6 million entered under economic preferences. Employment based preference immigrants are capped at 140,000 annually compared with a limit of 226,000 for family-sponsored immigrants (Wasem, 2012). By any calculation, family based migration dominates permanent resident flows to the US.

In contrast, the admission of migrants on the basis of their economic contributions characterizes current Canadian permanent resident flows (Boyd and Alboim, 2012). In the eyes of government policymakers, rising labour demand and demographic change (low fertility rates, an aging population) make it necessary to recruit skilled workers to safeguard economic growth and prosperity (CIC, 2010a; Gera and Songsakul, 2007). By 1995, over half of the legal permanent immigrants entered in the economic class (principal applicants and accompanying dependents), rather than through family ties or humanitarian concerns.

Of course, admissions in the economic or employment categories reflect not only principal applicants but also their accompanying family members, who may or may not hold similar qualifications. In the US, principal applicants in the first (E-1) and second (E-2) employment preference categories meet definitions of high skill, as they must be one of the following: persons of extraordinary ability in the arts, science, education, and business; athletes; outstanding professors and researchers; select multi-national executives or managers; members of the professions holding advanced degrees; persons of exceptional abilities in the sciences, art, or business. Persons are deemed “skilled” in the E-3 category if they are professionals with baccalaureate degrees or are working in areas facing skill shortages and have at least two years training or experience (Wasem, 2012). Admissions are demand driven, as applicants must be sponsored by employers who have made job offers.

In Canada, meanwhile, the major class of economic permanent admissions is the Foreign Skilled Worker Programme (FSWP) which uses a points system. Initially implemented in 1967, this points system has changed with respect to the factors used to give points and their relative weights (see: Boyd, 1976; Green and Green, 1999; O’Shea, 2009: Tables 4, 5, and 7). For example, the May 2013 points system privileges English/French language skills, high education, age, and employment offers. Other conditions apply (Boyd and Alboim, 2012). Applicants must have experience in managerial jobs, or occupations classified as level A or B in the National Occupational Classification (NOC) which require one of the following: a university degree or higher; two to three years of post-secondary education at community college, institute of technology, or collegiate institutions in the province of Quebec; two to five years of apprenticeship training; three to four years of secondary school and more than two years of on-the-job training; occupation-specific training courses or specific work experience, including those occupations with supervisory experience or having significant health and safety responsibilities (HRSDC, 2011).

Given its economic emphasis compared with the current US focus on family reunification, Canada disproportionately captures permanent admissions of the more highly skilled workers coming to North America. Table 1 compares principal applicants in Canada’s Foreign Skilled Worker programme (hereafter also called the skilled worker class) with principal applicants in the US E-1, E-2, and E-3 skilled worker preferences during a 16 year period between 1995 and 2010 (available print or web-based US immigration statistics do not provide the necessary detail to extend the analysis earlier than 1995). Nearly half (46%) of the North American principal applicants entering in these high skill classes were domiciled in Canada (Table 1, column 5); this contrasts with smaller permanent admissions and the smaller overall population size in Canada compared to the US (34 million versus 308 million in 2010). Even during the first decade of the twenty-first century, when important policy changes occurred in Canada (see the later section on policy changes) at least one-third of these principal applicants went to Canada.

Expressing the data as the number of principal applicants per 10,000 persons indicates the consequences of Canada’s economically driven permanent residence policy compared with the US family reunification policy. Over the 16 year period mentioned above, an average of 14 principal applicants in the skilled worker class for every 10,000 persons in the Canadian population became permanent residents. In the US during the same period, slightly under two principal applicants (1.8) in the E preferences acquired legal permanent resident status for every 10,000 persons (Table 1, columns 6 and 7). However, the conclusion that Canada is the leader in admitting skilled workers as

TABLE 1  
 PERMANENT RESIDENT ADMISSIONS<sup>(a)</sup> TO CANADA AND THE UNITED STATES OF AMERICA,  
 INCLUDING HIGH SKILLED PRINCIPAL ADMISSIONS, 1995-2010

	Total Permanent Resident Admissions <sup>(b)</sup>		Total High Skill Principal Applicants		Percent High Skill arriving in Canada <sup>(e)</sup>	Ratio <sup>(f)</sup> per 10,000	
	Canada	USA	Canada <sup>(c)</sup>	USA <sup>(d)</sup>		Canadian Population	USA Population
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Total	3,714,169	15,073,632	727,050	858,019	46	14.4	1.8
1995	212,865	720,177	34,553	26,571	57	11.8	1.0
1996	226,071	915,560	42,151	41,425	50	14.2	1.6
1997	216,035	797,847	44,969	30,351	60	15.0	1.1
1998	174,195	653,206	35,958	28,084	56	11.9	1.0
1999	189,951	644,787	41,548	19,562	68	13.7	0.7
2000	227,455	841,002	52,120	43,689	54	17.0	1.5
2001	250,638	1,058,902	53,911	77,120	43	19.0	2.7
2002	229,048	1,059,356	52,974	74,608	42	16.9	2.6
2003	221,349	703,542	45,377	31,471	59	14.3	1.1
2004	235,824	957,883	47,894	65,346	42	15.0	2.2
2005	262,241	1,122,257	52,269	106,183	33	16.2	3.6
2006	251,642	1,266,129	44,161	63,900	41	13.6	2.1
2007	236,754	1,052,415	41,251	67,331	38	12.5	2.2
2008	247,248	1,107,126	43,360	68,403	39	13.0	2.2
2009	252,172	1,130,818	40,733	56,055	42	12.1	1.8
2010	280,681	1,042,625	48,821	57,920	46	14.3	1.9

(a) Annual report data are subject to minor changes on a yearly basis. The most recent reports have been used as sources.

(b) Data include refugee and humanitarian based admissions; for the USA, data include admissions of immediate family members whose numbers are not subject to annual numerical limitations. Canadian immigration data are for calendar years; United States data are for fiscal years.

(c) In Canada, numbers refer to principal applicants in the Skilled Worker Class.

(d) In the United States, numbers refer to principal applicants in the E-1, E-2 and E-3 preferences. The data for the E-3 preference exclude applicants who are considered low skill.

(e) Calculated from [column 3/(column 3 + column 4)].

(f) Annual population size reflects census counts or annual population estimates. Figures of 14.4 and 1.8 for the period 1995-2010 are the country specific averages over the 16 years.

Sources: Citizenship and Immigration Canada. *Facts and Figures 2005, Facts and Figures 2010*; United States Bureau of Homeland Security, *Yearbook of Immigration Statistics*, various years. United States Department of Justice, *Immigration and Naturalization Service 7995 Statistical Yearbook*.

permanent residents requires clarification. First, other categories – including family and humanitarian admissions – may contain persons destined for the labour market who have high levels of human capital. Second, permanent admissions cannot be equated with the total stock of highly educated or occupationally skilled workers in a country (Lowell 2010). The US relies more heavily on temporary admissions as the way-station towards the permanent recruitment of a highly trained foreign-born workforce. Of the 862,500 principal applicants admitted into the US between 1995 and 2010 on E1, E2, and E3 visas (Table 1), nine out of ten (88%) acquired permanent residence by adjusting their status from temporary to permanent. Only 12 per cent were new arrivals. In contrast, between 2001 and 2010, transitions from the temporary worker status represented one in ten (9.9%) of Canadian FSWP principal applicants (CIC, 2010b: Tables 3 and 33). In the US, the corresponding rate of transition between 2001 and 2010 was nearly the same as between 1995 and 2010, standing at 87 per cent.

## Recruiting temporary high-skilled workers

Both Canada and the United States have programmes through which temporary workers are admitted. Such workers may be professionally trained and/or university educated or they may be low skill labour or recruited for part-year agricultural work. The reliance on temporary workers is arguably older and larger in the US, dating back to the Bracero programme's recruitment of Mexicans for employment in US agriculture between 1942 and 1964. In each country, some – but not all – jobs for temporary workers are subject to labour market tests; assessments may be made of the likely impact on native-born workers, or more commonly, on the unavailability of native-born workers to perform the work. With the 1994 North American Free Trade Agreement (NAFTA) between Canada, the United States, and Mexico, a sub-group of professional workers in each country does not require labour market tests.

A plethora of visa categories exist in each country. To capture the more highly skilled, defined either by education or job related training (Batalova and Lowell, 2007), the following categories are the most relevant for the US: TN visas for professional workers temporarily admitted for up to one year (with no limit on the number of extensions) under NAFTA; L visas for intra-company transferees; O visas for those with extraordinary ability or achievement in business, arts, education, athletics, and sciences; H1B visas for workers in specialty occupations. H1B visas usually require a baccalaureate or equivalent or a higher degree and recruit workers with specialized theoretical and applied knowledge in physical science, engineering, medicine, health, and social sciences.

Issued for three years, up to a maximum of six years, H1B visas allow dual intent: a visa holder can apply for permanent residence while holding the visa. H1B visas are the major source of temporary STEM workers (science, technology, engineering, medicine) and are used by employers in the high-technology/information sector. Employers wishing to sponsor a worker through the H1B visa system must either offer wages comparable with those offered to other workers with similar experience and qualifications or offer the prevailing wages for the occupation. In addition to the 65,000 annual ceiling, 20,000 visas are available under the advanced degree exemption for foreigners who obtain a US master's degree or higher. Overall demand is great: by April 5, 2013, within the first week of the filing period, the United States Citizenship and Immigration Services (USCIS) received a sufficient number of petitions to reach the statutory cap for the fiscal year 2014 (USCIS, 2013).

Assessing the relative impact of temporary high skill worker admissions compared with legal permanent residents is difficult and comparisons must be viewed as suggestive rather than definitive. The Office of Immigration Statistics, housed in the US Department of Homeland Security, provides admissions statistics for legal permanent residents and for temporary categories. However, nonimmigrant admissions refer to number of events (i.e., entries into the US) rather than individuals and it is possible for one person to generate multiple admissions. Before March 2010, only the initial admission was counted if the individual arrived through a land port; but updates to DHS computer systems mean that all admissions are captured starting March 2010. The Department of State has data on the number of visas issued, but the data include all visas regardless of whether the person entered the United States or not.

Recent admissions in temporary visa categories of H1B (and H1B1), TN, L1, and O1/O2 far exceed numbers in the E1, E2, and E3 (excluding unskilled workers) admitted annually as permanent residents (Table 1, column 4 versus Table 2, column 1). The annual numbers of these visas can be expressed as a ratio of the total US population for each year, keeping in mind that multiple admissions exist for temporary admissions. The rates per 10,000 persons indicate that during the past ten years (2001-2010), over 25 admissions occurred in these temporary visa categories per 10,000 persons in the US population. H1B visas and L1 intercompany transfers dominate, with an average of 13.5 admissions with H1B visas per 10,000 persons over the ten year period. The rates

TABLE 2  
NON-IMMIGRANT ADMISSIONS FOR WORKERS WITH SELECT TEMPORARY VISAS, UNITED STATES OF AMERICA, 2001-2010

Fiscal Years	Workers with Visas, excluding Spouses and Children						Ratio <sup>(g)</sup> per 10,000		
	Total (1)	H1B <sup>(a)</sup> (2)	H1B1 <sup>(b)</sup> (3)	O1 <sup>(c)</sup> (4)	O2 <sup>(d)</sup> (5)	L1 <sup>(e)</sup> (6)	TN <sup>(f)</sup> (7)	Total (8)	H1B only (9)
Total	9,241,407	4,006,626		338,062	86,646	3,470,120	1,339,074	31.0	13.5
2001	837,477	384,191	X	25,685	3,834	328,480	95,287	29.4	13.5
2002	786,713	370,490	X	25,008	4,156	313,699	73,360	27.4	12.9
2003	743,615	360,498	X	25,541	5,321	298,054	59,201	25.8	12.4
2004	800,738	386,821	4	27,127	6,332	314,484	65,970	27.3	13.2
2005	821,672	407,418	47	29,715	7,635	312,144	64,713	27.8	13.8
2006	868,227	431,853	129	31,969	9,567	320,829	73,880	29.1	14.5
2007	957,111	461,730	170	36,184	10,349	363,536	85,142	31.8	15.3
2008	934,665	409,619	153	41,238	12,497	382,776	88,382	30.7	13.5
2009	830,426	339,243	213	45,600	12,966	333,386	99,018	27.1	11.1
2010 <sup>(h)</sup>	1,655,763	454,763	163	49,995	13,989	502,732	634,121	53.5	14.7

(a) Workers in Specialty Occupations.

(b) Chile and Singapore Free Trade Agreement aliens.

(c) Workers with extraordinary ability or achievement (O1).

(d) Workers accompanying and assisting in performance of O1 workers (O2).

(e) Intracompany transferees (L1)

(f) North American Free Trade Agreement (NAFTA) professional workers (TN).

(g) Annual population size reflects census counts or annual population estimates. Figures of 31.0 and 13.5 for the period 2001-2010 are the averages over the ten years.

(h) The number of nonimmigrant admissions in 2010 greatly exceeds totals reported in previous years due to a more complete count of land admissions.

Sources: United States Department of Homeland Security, Office of Immigration Statistics. *Yearbook of Immigration Statistics 2010*, Table 25.

are higher than for admissions in the E-1, E-2, and E-3 preferences (Table 2, column 9 versus Table 2, column 7). In fact, if numbers are compared, the volume of annual admissions in the H1B category is between five and 11 times the number of principal applicants in the E-1, E-2 and E-3 (excluding less skilled workers) preferences.

Canada's current temporary worker visa system began with the 1973 Employment Visa Regulations, subsequently replaced by regulations in the 1976 Immigration Act (Boyd, Taylor and Delaney, 1986). At the time of writing (September 2013), migrants explicitly recruited to meet Canadian labour market needs on a temporary basis usually enter under three programmes developed and managed by Citizenship and Immigration Canada: Seasonal Agricultural Worker Programme (SAWP); Live-in Caregiver Programme (LCP); and Temporary Foreign Worker Programme (TFWP) which is the largest. Highly skilled workers in TFWP are defined as having the education or on-the-job training required for occupations classified as Level A or B in the National Occupational Classification system. However, not all workers entering under TFWP are highly skilled. Under the Pilot Project for Occupations Requiring Lower Levels of Formal Training, TFWP admits persons for 24 months who are destined for low skilled occupations, generally requiring high school diplomas or less (HRSDC, 2012b).

Despite the various "skill" gradations in Canadian temporary visa regulations, educational or skill profiles of specific temporary employment visas are difficult to determine from published documents. Some sub-categories of visas that require Labour Market Opinions (LMO) permit identifying "high skill" workers. LMOs assess the impact of the foreign worker on Canada's labour market, particularly how the offer of employment will affect Canadian jobs (HRSD, 2012a). However, not all skilled temporary workers require LMOs (CIC, 2012). Additionally, information on the educational requirements of occupations held by temporary workers is not published for all visas categories; increasing numbers are admitted without records of the educational requirements of their occupations. This "non-tabulation" rose from 14 per cent in 2000 to 35 per cent in 2010 alongside increases in the "reciprocal transfers" category where intra-company transfers dominate and LMOs are not required (Citizenship and Immigration Canada (CIC), 2010b: Table 11).

For purposes of a crude comparison with the US, in Table 2 Canadian admissions data are presented for entries under various trade agreements, information technology and other LMO categories. Admissions in LCP, SAWP, and the Low Skill Pilot Programme developed by the Canadian federal government are excluded. (Unlike the US, subsequent entries in calendar year are captured only if new documents are issued). While this strategy is suggestive rather than conclusive, Table 3 approximates the categories in Table 2 and generates two findings. First, work visas in the LMO-required subset and foreign-agreement related visas are only very slowly increasing. Indeed, even these modest changes may be exaggerated by the inclusion of visas in the "other LMO worker" category simply because these employment offers are diverse, ranging from workers in the hospitality sector (fast food restaurants, hotels) to engineers and nurses (Boyd and Alboim, 2012). Second, unlike the US where temporary admissions eclipse permanent admissions in the skilled categories, total annual counts in Canada are either similar or slightly above the annual admission of principal applicants in the skilled worker category for permanent residents. Even though Canada has a growing system of recruiting temporary workers, it has yet to replicate the large volumes entering as temporary highly skilled labour under the US H1B visa programme, and to a lesser extent, its O1 and L1 visas.

## NEW DEVELOPMENTS IN POLICIES TARGETING HIGH SKILLED MIGRANTS

In the global race for the "best and the brightest," Canadian and American governments seek improvements in their immigration policies to target highly skilled foreign workers. Today, both

TABLE 3  
ADMISSIONS FOR WORKERS WITH SELECT TEMPORARY VISAS, CANADA, 2001-2010

Calendar Years	Total	NAFTA <sup>(a)</sup>	Other FTA <sup>(b)</sup>	GATS <sup>(c)</sup>	Other workers with LMOs <sup>(d)</sup>	Information technology workers	Ratio <sup>(e)</sup> per 10,000 population
	(1)	(2)	(3)	(4)	(5)	(6)	
Total	511,116	139,076	4,049	7,974	256,888	19,846	15.7
2001	50,350	15,110	481	2,245	25,110	901	16.2
2002	46,367	13,424	385	1,689	23,499	836	14.8
2003	42,630	11,693	267	616	22,176	1,056	13.5
2004	43,022	11,525	289	502	22,656	1,307	13.4
2005	45,790	11,879	309	434	24,313	1,782	14.2
2006	51,792	13,361	361	521	26,561	2,152	15.9
2007	57,590	14,082	381	636	30,430	2,983	17.5
2008	62,169	15,566	529	603	32,418	3,210	18.7
2009	54,509	14,967	500	371	26,741	2,691	16.2
2010	56,897	17,469	547	357	22,964	2,928	16.7

(a) NAFTA refers to visa agreements under the North American Free Trade Agreement.

(b) Visas granted under Free Trade Agreements.

(c) Visas issued under GATT, the General Agreement on Trade in Services.

(d) Workers who require a Labour Market Opinion regarding their hires, excluding those who enter in the Seasonal Agricultural Worker Program, the Live-in Caregiver Program, and the Low Skill Pilot Program.

(e) Annual population size reflects census counts or annual population estimates. The figure of 15.7 for the period 2001-2010 is the average over the ten years.

Source: Citizenship and Immigration Canada. *Facts and Figures 2010*. <http://www.cic.gc.ca/english/resources/statistics/facts2010/temporary/03.asp>

countries are on the cusp of noteworthy revisions; proposed US legislation on comprehensive immigration reform emerged in 2013 while Canada moves to adopt a two-step employer-demand driven system of recruitment, such as that found in New Zealand. Nonetheless, United State immigration reform appears more fragile; one plausible factor in the varying success of US and Canadian initiatives is the fundamental difference between the American “presidential” or party system model and the Canadian parliamentary system.

### The United States: comprehensive immigration reform redux?

Changes in US legislation on the recruitment of highly skilled foreign labour must be understood within the context of stalled immigration reform. Legislative attempts to pass major immigration acts were thwarted in 2006 and in 2007. Analysts attribute American difficulties in passing legislation generally and obtaining comprehensive immigration reform in particular to the competitive demands of enforcement and legalization and to changes in the visa system. They note several related challenges: the reconciliation of liberal principles of democracy with police functions necessary to control immigration flows; the opposition of employer and worker interests in immigration; the ambivalence of politicians to privilege legislation that improves working conditions and pay in the face of low-waged undocumented immigration and structural dependency on such a system; and the deep political divisions between those advocating and those opposing legislation (Calavita, 1994; Rosenblum, 2011). Checks and balances implied in the presidential system of government facilitate this opposition-based paralysis. Bills may start in the House of Representatives or in the Senate but must be approved and identically worded by both to pass to the executive. But no



necessary or guaranteed co-ordination of executive and legislative branches exists; Congress can act independently of the President in passing legislation; congressional committees and committee chairs are independent sources of power that can halt legislation; multiple opportunities exist for vetoes and/or alterations of pending legislation (Landes, 2002: chapters 3 and 4; Maioni, 1998).

Past failure to enact comprehensive immigration reform means that current laws regulating the admission of permanent residents to the US bear the imprint of the 1965 Immigration and Nationality Act and the resulting emphasis on family based migration. Consequently US recruitment of highly skilled foreign migrants has three signature characteristics: permanent and temporary inflows are demand driven, requiring job offers; the relatively small number of permanent admissions under the E preferences is compensated by the much greater recruitment of temporary workers; and the majority of the legal permanent resident green cards go to highly skilled workers (and their families) already in the US on temporary visas.

The H1B visa programme and to a lesser extent the L-1 and O-1 visa system not only recruit temporary workers but are the *de facto* mechanism for the back-door acquisition of a green card assigned to E-1, E-2, and E-3 skilled workers. But this two-step process has limitations. First, as Table 2 shows, demand appears to outstrip supply; during the last decade, annual admissions in the H1B category are over five times the admissions of principal applicants in the E-1, E-2, and E-3 (excluding less skilled workers) categories. Second, current legislation limits the annual number of employer sponsored green cards to 140,000 (including family members), with no more than seven per cent given to any country. With a country specific cap, persons from countries that are major suppliers for the H1B visas wait longer to receive green cards (Anderson, 2011). Third, from a policy management perspective, the incremental transformation to permanent status is cumbersome and thwarts integration. The procedure requires multiple steps through different programmes and variable economic conditions; steps include acquiring a temporary visa, fulfilling term conditions, applying for a green card, and waiting. Employers must devote time to paperwork with each employment offer (Papadimitriou and Sumption, 2011).

The re-election of President Barack Obama renewed efforts at comprehensive immigration reform. The recent passage of Senate bill S.744 (the Border Security, Economic Competitiveness and Immigration Modernization Act of 2013) on June 27, 2013 is heralded as a significant step on the path to immigration reform. True to the term “comprehensive,” the bill deals with the contentious issues of increasing border security, interior enforcement, employment verification, trafficking, undocumented migrants, the agricultural worker programme, levels for H1B admissions, as well as changes in the admission of future immigration flows of permanent residents. Changes targeted at permanent migrants include reductions in certain categories of relatives, and increases in the numbers of employment oriented visas. Two streams of economic migrants exist; high skilled migrants are in track one and less skilled migrants are in track two. Five years into the programme two different point systems will apply to these applicants. In track one, points would be given for human capital (education, employment experience, employment related to education, high demand employment, and English language skills) alongside lower points for civic involvement, family ties, age and being a national of a country with fewer than 50,000 lawfully admitted in the past five year. As well, world-wide levels will not apply to select applicants, including professionals with advanced degrees.

Changes to the H1B visa programme include: 1) provisions that employers seeking to recruit H1B workers will have to take steps to recruit US workers for the positions with distinctions between those deemed H1B visa dependent employers (having 15 per cent or more of the workforce with such visas); 2) increases in the caps for H1B visas, in wage requirements and in fees for employers with a large share of such workers.

The momentum created by S744 was not transported when it went to the House of Representatives. The initial optimism over a quick enactment of a comprehensive reform bill in the House was dashed by the end of September 2013 as a bipartisan coalition (the Gang of Seven) fell apart

alongside the foci of legislators on Syria, President Obama's healthcare reform, and the related failure of the House to pass a budget bill. In the short term, legislative attention will be on how to end the budget impasse, on what to do with healthcare legislation, and on the November 2014 mid-term elections. Consequently, comprehensive immigration reform by the House is unlikely in the immediate future although new initiatives could emerge in 2014. For reasons noted earlier, the dynamics of passing US legislation make particularly difficult the enactment of an immigration bill like S744. However, if it or a similar bill is enacted, American immigration policy could undergo a decided shift toward economic based admissions, including possibly a points system for skilled workers.

### **Canada: centralizing policy making, dispersing selections, emphasizing demand**

US immigration policy reflects a multiplicity of actors, including legislators, but Canadian immigration policies are managed by the federal government, specifically by the Minister of Citizenship and Immigration. This centralization of power is enabled by a parliamentary system of governance whereby decision-making powers lie in the executive branch rather than the legislature. In a parliamentary system, the Prime Minister can be very powerful, and decisions often are made by a Cabinet comprised of elected ministers in charge of government departments. The centralization of power means that party discipline over elected representatives (Members of Parliament) is strong, and bloc voting along party lines is the norm (Landes, 2002: chapters 3 and 4; Maioni, 1998; Savoie, 2010). As a result, parties with the majority of elected representatives have greater success in passing their legislation.

The longstanding Canadian tradition is to use regulations to implement the intent of immigration laws. Between World War II and the 1970s, the civil service took the initiative in devising policy and advising the ministers of various portfolios (Hawkins, 1972); during the 1970s and early 1980s, consultations with the public became part of policymaking. The increasing strength of the Conservative federal government under Prime Minister Harper has minimized policy inputs from the public service and consultations with the general public, with power increasingly centralized within the executive, especially the Prime Minister's office (Savoie, 2003, 2010).

The formulation and management of immigration policy by the executive branch of the Canadian government became a reality in 2008 with Bill C-50, the Budget Implementation Act. Annual budgets presented to Parliament normally deal with fiscal matters, but the February 2008 Budget Act contained amendments to the 2002 Immigration and Refugee Protection Act. This lacked precedent. Rather than tabling amendments as a stand-alone parliamentary bill subject to debate, consultation and the involvement of all political parties, amendments were inserted into a budget bill that was unlikely to be defeated, as defeat would represent a vote of non-confidence, causing the dissolution of the Conservative government. The amendments gave complete discretion to the Minister of Immigration to process applications made after February 2008 in ways that best supported government immigration goals. Further, the Minister was authorized to give instructions to visa officers on processing applications, establish categories of applications, prioritize order, set the number of applications processed in a given year, and provide for repeat applications (Boyd and Alboim, 2012). In short, decisions were no longer subject to parliamentary and public scrutiny and debate but transferred to the executive, particularly the Minister.

Recently altered procedures for recruiting highly skilled migrants include: 1) delegating selection; changing numbers and criteria for admissibility in the skilled worker class; 2) creating a Federal Skilled Trades class; 3) developing a two-step model that transitions temporary visas into permanent resident status. Demand-side and employer driven models are gaining ground and can be easily implemented given the augmented ministerial powers.

Although the Minister of Citizenship and Immigration can and does issue ministerial instructions that set policy and stipulate admissibility criteria, employers and provinces increasingly are making the decisions about which skilled workers to admit. Under the 1991 Canada-Quebec Accord, Quebec has its own regulations and points system. In addition to the skilled worker class, which federally and in Quebec operates on the points system, a Provincial Nominee class (PNC) was introduced in 1996 to facilitate permanent admissions based on economic contributions. This class allows provinces to nominate migrants for admission using selection criteria that reflect local labour markets. All provinces have signed agreements with the federal government, although substantial variations exist in how provinces recruit (websites, employer consultations, guidebooks), in the types of workers sought (professions, clerks, farm workers, tourism, food processing, trucking, entrepreneurs), and whether workers are already in Canada or admitted directly from another country. Not all workers have high levels of education or special training; lower percentages with bachelors' degrees or higher characterize principal applicants admitted in the PNC compared with principal applicants in the Economic class as a whole (Kelly et al., 2011: Table 10).

The PNC programme fast-tracks chosen workers; applications are prioritized over those in the skilled worker programme. The priority given to this demand-driven class is evident in the rapid acceleration of admissions after 2004. In 2001, only 410 PNs entered Canada compared to 58,910 admissions in the points-driven FSWP; ten years later, comparable figures stood at 15,290 and 36,770 respectively. Because targets are established in annual reports tabled in Parliament by the Minister, these changing numbers reflect deliberate downscaling of the supply driven skilled worker class in favour of the employment-driven, demand-side PNC programme. Further, the federal government adjudicates points and thus selects applicants in the FSWP class, while the provinces select PNC applicants, often in consultation with employers. Finally, PNC admissions draw heavily from temporary workers already in Canada; between 2002 and 2010 nearly half (46%) were temporary foreign workers transitioning to legal permanent resident status (Citizenship and Immigration Canada (CIC), 2010b, Tables 3 and 13).

Admissibility criteria in the skilled worker class are changing to recruit workers whose skills strongly match employment demand and whose age, education and language profiles make employment likely. During the 1990s, the programme did not assess the occupational background of applicants; starting in 2008 with subsequent revisions, visa officers now are instructed to process only those in 24 high demand occupations (out of a possible 520) unless arranged employment exists. Before changes beginning in 2008, FSWP was a supply-side model of labour recruitment resting on applications. In recent years, applications have outnumbered the visas allocated annually to the programme, producing daunting backlogs. The March 2012 budget legislation did away with a backlog of approximately 280,000 pre-2008 applications under the skilled worker programme. A six-month pause on accepting new applications in the skilled worker class was announced, ostensibly to set the programme "on a new course". Exceptions include those with arranged employment or applicants under the PhD eligibility stream, i.e. international students who have completed at least two years of study towards a PhD in a provincially or territorially recognized private or public post-secondary Canadian educational institution.

Beginning in September 2011, ministerial statements, press releases, and proposed regulatory amendments indicated three pending shifts in the management of Canada's recruitment of highly skilled workers as permanent residents: revision of the points system and other criteria governing the FSWP; the establishment of a category targeted at recruiting workers in the skilled trades; and a two-step model of recruiting permanent skilled workers from a temporary residence pool. The new admissions criteria began on May 4 2013, coinciding with the lifting of the moratorium on applications. The new points system mandate a minimum level of language skills, make language the most important factor in the selection process, require language skill testing by a third party, decrease points for educational at the lower ends of secondary, decrease points for experience, and alter points to favour the recruitment of those between ages 18-35. Applicants to the Skilled

Worker class must now have their credentials assessed and verified by a third party organization before arriving in Canada (Government of Canada, 2012). Applicants lacking equivalencies will not be allowed to apply in the skilled worker class under those occupations. These requirements mirror those adopted by Australia in 1999, and the intention is to screen out those lacking appropriate educational levels and/or training.

Changes in the skilled worker class also strengthen demand as a criterion of admissibility. In addition to language and educational assessments, prospective applicants must now meet at least one of three requirements: have at least one year of experience in one of 24 priority occupations; have a qualifying offer of employment; or be eligible to apply through the PhD stream. Admissions under the PhD stream are capped at 1,000 per year; the 24 priority occupations have an overall cap of 5,000 and a sub-occupational cap of 300. Based on recent inflows (Table 1, column 3), the bulk of FSWP admissions will be from those who hold valid offers of employment.

A Federal Skilled Trades Class, established in January 2013, reflects the need for workers in skilled trades. Applicants now must also meet minimum language skill requirements, undergo educational-training assessments, have experience in the same skilled trade as their job offer and have a job offer in one of 43 jobs considered to be in higher or moderate demand. One possible effect may be additional declines in workers in FSWP, as the Federal Skilled Trades Class now includes trade workers formerly admitted under FSWP and enlarges the earlier list of allowable trades.

In September 2008, the Canadian Experience Class (CEC) was established within the economic admissions class for permanent residents. CEC targets temporary foreign workers with NOCS management, level A and B occupations (see earlier section), select skilled tradespersons, and foreign student graduates with Canadian graduate degrees and with professional, managerial, and skilled work experience. Like the Provincial Nominee Programme which draws on temporary workers and the PhD stream programme, CEC also provides a two-step process for permanent admission.

The government's announced commitment in 2012-2013 to developing an "Expression of Interest" admission system is perhaps the most important signal in the reconfiguration of Canada's recruitment of skilled labour to one that is decentralized, demand driven and employer instigated. Similar to the approach devised in New Zealand and adopted by Australia, a pool of skilled workers would be created by having prospective immigrants fill in on-line forms that indicate human capital skills and work experience. Points would be assigned, applications ranked and then entered into a pool; the EOI form would not be an application for admission but rather the first stage in the potential recruitment of a worker. CIC envisions that employers or a provincial/territory government would select among this pool, triggering a second step of applying for admission. In such a system, backlogs of applications would be avoided and immigrants would arrive with offers of employment. This "just in time" process is viewed by government policy makers as recruiting people with the right skills, fast tracking applications for admission and having workers arrive in a few months. Although the EOI procedure currently focuses on the skilled worker (FSWP) permanent migrant stream, it has broad applicability to other programmes, including the Temporary Worker Programme where a major review report indicating programme changes is expected by December 2013.

## CONCLUSION

Migration data and policy overviews confirm that Canadian permanent resident policy is oriented to the recruitment of high skilled labour, particularly through its Skilled Worker class, whereas in the United States, family migration based flows currently dominate. However, this statement provides incomplete insight into high skilled worker flows. First, the US relies on large numbers of temporary skilled workers with H1B, L, O, and TN visas, with transitions to permanent resident

status occurring for H1B, L-1, and O-1 workers. Second, a rapidly growing temporary worker population in Canada now includes those with high levels of skills, defined in terms of education, skills training, and type of occupation held.

Analyses of recent and pending policy changes also modify the imagery of differences between Canada and the US in skilled labour recruitment. Canadian principles of selecting among permanent resident applicants on the basis of general human capital are being replaced by mechanisms relying on the demands for specific workers and by utilizing a two-step system whereby skilled temporary migrants are eligible for permanent residency. The Canadian immigration system for high skill workers now is demand driven, with a multiplicity of non-federal actors, including employers, selecting workers and with greater use of temporary skilled workers as a source of permanent residents. In the absence of comprehensive immigration reform, the US will continue to rely on skilled temporary migrants, with some transitioning to permanent legal status. Future legislation, however, cannot be discounted and if it builds on Bill S744, future migrant admissions to the US would include a larger proportion of those on H1B visas and those with permanent legal visas based on high skills.

## REFERENCES

- Antecol, H., et al.  
 2003 "Immigration Policy and the Skills of Immigrants to Australia, Canada and the United States", *Journal of Human Resources*, 38(1): 192–218.
- Anderson, S.  
 2011 "Waiting and more waiting: America's family and employment-based immigration system", NFAP Policy Brief. October. Washington DC: National Foundation for American Policy, [http://www.nfap.com/pdf/WAITING\\_NFAP\\_Policy\\_Brief\\_October\\_2011](http://www.nfap.com/pdf/WAITING_NFAP_Policy_Brief_October_2011) (accessed 10 October 2013).
- Batalova, J., and B.L. Lowell  
 2007 "Immigrant professionals in the United States", *Society*, 44(2): 26–31.
- Borjas, G.  
 1993 "Immigration Policy, National Origin, and Immigrant Skills: A Comparison of Canada and the United States", in D. Card and R. Freeman (Eds), *Small Differences That Matter: Labor Markets and Income Maintenance in Canada and the United States*. University of Chicago Press, Chicago: 21–44.
- Boyd, M.  
 1976 "Immigration policies and trends: a comparison of Canada and the United States", *Demography*, 13(1): 83–104.  
 2012 "Managing international migration: the Canadian case", in D. Rodriguez-Garcia (Ed), *Managing Immigration and Diversity in Canada: A Transatlantic Dialogue in the New Age of Migration*. McGill-Queen's University Press, Montreal: 119–146.  
 1986 "Temporary workers in Canada: a multifaceted phenomenon", *International Migration Review*, 20: 929–950.
- Calavita, K.  
 1994 "U.S. Immigration and policy responses: the limits of legislation", in W.A. Cornelius, P.L. Martin and J.F. Hollifield (Eds), *Controlling Immigration: A Global Perspective*. Stanford University Press, Stanford: 55–82.
- Challinor, A.E.  
 2011 "Canada's immigration policy: a focus on human capital", Washington DC: Migration Policy Institute, Migration Information Source. <http://www.migrationinformation.org/feature/display.cfm?ID=853> (accessed 10 October 2013).
- Citizenship and Immigration Canada (CIC)  
 2010a *Annual Report to Parliament 2010: Section 1*, <http://www.cic.gc.ca/english/resources/publications/annual-report2010/section1.asp>. (accessed 10 October 2013).

- 2010b “Facts and figures 2010: immigration overview – permanent and temporary residents”, <http://www.cic.gc.ca/english/resources/statistics/facts2010/index.asp>. (accessed 10 October 2013).
- Government of Canada
- 2012a “Regulations Amending the Immigration and Refugee Protection Regulations” *The Gazette*. Part I: Notices and Proposed Regulations 146(33), August 18.
- 2012b “Working temporarily in Canada: Jobs that require a work permit but no labour market opinion.” June 11. <http://www.cic.gc.ca/english/work/apply-who-permit.asp>. (accessed 10 October 2013).
- Doomernik, J., et al.
- 2009 “The battle for the brains: why immigration policy is not enough to attract the highly skilled”, *Brussels Forum Paper Series* March. Washington DC: German Marshall Fund. <http://dare.uva.nl/document/186515>. (accessed 10 October 2013).
- Gera, S., and T. Songsakul
- 2007 “Benchmarking Canada’s performance in the global competition for mobile talent”, *Canadian Public Policy*, 33(1): 63–84.
- Green, A.G., and D.A. Green
- 1999 “The economic goals of Canada’s immigration policy: past and present”, *Canadian Public Policy/Analyse de Politiques*, 25(4): 425–451.
- 1995 “A Comparison of Canadian and US Immigration Policy in the Twentieth Century”, in D.J. DeVoretz (Ed), *Diminishing Returns: the economics of Canada’s recent immigration policy* C. D. Howe Institute, Toronto.
- Human Resources and Skills Development Canada (HRSDC)
- 2011 *The National Occupational Classification 2011 (NOC 2011)*, [http://www5.hrsdc.gc.ca/NOC/English/NOC/2011/pdf/Printable\\_NOC2011\\_version\\_E.pdf](http://www5.hrsdc.gc.ca/NOC/English/NOC/2011/pdf/Printable_NOC2011_version_E.pdf). (accessed 10 October 2013).
- 2012a *Labour Market Opinion*, April 12, [http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/ei\\_tfw/lmi\\_tfw.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ei_tfw/lmi_tfw.shtml). (accessed 10 October 2013).
- 2012b *Temporary Foreign Worker*, February 5, [http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/fwp\\_forms.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/fwp_forms.shtml) (accessed 10 October 2013).
- Keely, C.B.
- 1971 “Effects of the immigration act of 1965 on selected population characteristics of immigrants to the United States”, *Demography*, 8(2): 157–169.
- Kelley, N., and M. Treblicock
- 2010 *The Making of the Mosaic: A History of Canadian Immigration Policy*. University of Toronto Press, Toronto.
- Kelly, P. et. al.
- 2011 “Profile of provincial nominee program (PNP) immigrants to Canada, 1996-2009”, TIEDI Analytical Report 26. <http://www.yorku.ca/tiedi/doc/AnalyticalReport26.pdf> (accessed 10 October 2013).
- Landes, R.G.
- 2002 *The Canadian Polity: a comparative introduction*, 6th edn.. Prentice Hall, Toronto.
- Lowell, B.L.
- 2010 “A long view of America’s immigration policy and the supply of foreign-born STEM workers in the United States”, *American Behavioral Scientist*, 53(7): 1029–1044.
- Maioni, A.
- 1998 *Parting at the Crossroads: the emergence of health insurance in the United States and Canada*. Princeton University Press, Princeton.
- Martin, S. F.
- 2011 *A Nation of Immigrants*. Cambridge University Press, New York.
- O’Shea, E.
- 2009 “Missing the point(s): The declining fortunes of Canada’s economic immigration program”, Transatlantic Academy Paper Series April 2009, [http://www.gmfus.org/wpcontent/blogs.dir/1/files\\_mf/galleries/ct\\_publication\\_attachments/TA\\_OShea\\_CandadaEconImmigrationProgram.pdf](http://www.gmfus.org/wpcontent/blogs.dir/1/files_mf/galleries/ct_publication_attachments/TA_OShea_CandadaEconImmigrationProgram.pdf). (accessed 10 October 2013).
- Papadimitriou, D.G., and M. Sumption
- 2011 *Rethinking Points Systems and Employer Selected Immigration*. Migration Policy Institute, Washington DC.

- Reka, P.  
2002 *"US and Canadian Immigration Policies"*, *Commentary* 171 November. C. D, Howe Institute, Toronto.
- Rosenblum, M.R.  
2011 *US Immigration Policy since 9/11: Understanding the Stalemate over Comprehensive Immigration Reform*. Migration Policy Institute, Washington DC.
- Savoie, D.J.  
2003 *Breaking the Bargain: Public Servants*. University of Toronto Press, Toronto, Ministers and Parliament.  
2010 *Power: Where is it?*. McGill-Queen's University Press, Montreal.
- Tichenor, D.J.  
2002 *Dividing Lines: the politics of immigration control*. Princeton University, Princeton.
- United States Citizenship and Immigration Services (USCIS)  
2013 "H-1B fiscal year (FY) 2014 Cap season", <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=4b7cdd1d5fd37210VgnVCM100000082ca60aRCRD&vgnnextchannel=73566811264a3210VgnVCM100000b92ca60aRCRD> (accessed 10 October 2013).
- Wasem, R.E.  
2012 "U.S. Immigration Policy on Permanent Admissions", Congressional Research Service Report for Congress, <http://www.fas.org/sgp/crs/homesecc/RL32235.pdf>. (accessed 10 October 2013).
- Zolberg, A.R.  
2006 *A Nation by Design: immigration policy in the fashioning of America*. Russell Sage and Harvard University, New York.