

Case studies: Hongkongers struggling to access the Open Work Permit scheme

Background

In November 2020, the Minister of Immigration, Refugees and Citizenship announced the creation of an open work permit targeted at Hong Kong students and their dependents which would allow a pathway to Canadian citizenship.¹

Under the changes any resident of Hong Kong who has graduated from a recognised university (in Canada or elsewhere) in the past five years can apply to work for up to three years in Canada, with easier transition to permanent residency thereafter. Dependents (including spouses and children) are eligible to apply. There is also a streamlined pathway to permanent residency for any Hong Kong citizen who has graduated from a Canadian university.

So far 12,000 individuals have applied for the scheme. 6,487 were approved by October 2021, and only 45 had permanent resident status approved by January 2022.

According to research by Community Family Services of Ontario (CFSO), 22% of Open Work Permit applicants graduated in 2016 or 2017, making them ineligible for permanent residency under the scheme because by the time they complete their PR requirements, their degree will be over 5 years, which is outside of the 5-year requirement set by IRCC.²

There remains substantial barriers for Hongkongers to access the Open Work Permit scheme and it is set to expire on 7 February 2023 and no replacement has yet been announced.

All of the case studies in this briefing are real life case studies of individuals impacted by the barriers currently in place for the Open Work Permit scheme. Hong Kong Watch has removed details identifying them for security and privacy reasons.

¹<https://www.canada.ca/en/immigration-refugees-citizenship/news/2020/11/canada-announces-immigration-measures-supporting-hong-kong-residents-and-canadians-in-hong-kong.html>

² <https://drive.google.com/file/d/16txRTnZX155npjJWpgQ6C7OciB7n00wM/view?usp=sharing>

Outstanding issues that need to be addressed

Research by Hong Kong Watch has found that 93% of those currently facing charges for protest related offences in Hong Kong were born after 1997, and therefore many of them are not covered by the UK BNO Visa Scheme or the planned extension in November.³

Analysing the number of Hong Kongers covered by the current UK BNO Visa Scheme, the planned extension in November, and the lifeboat schemes offered by Canada and Australia, Hong Kong Watch has found that 1.3 million Hong Kongers are not covered by any scheme and do not have viable routes of out the city.

Five-year graduation limit of the Open Work Permit

Many frontline human rights defenders in their 20s and 30s in Hong Kong do not qualify for the Open Work Permit as they have graduated from university beyond the five-year limit currently set for the scheme.

Even for those recent graduates who meet the 5-year graduation requirement at the time of applying for their open work permit, by the time their work permit is received and they have fulfilled the hours of work requirement they are finding that they are no longer eligible to apply for permanent residency under Stream B of the scheme.

Case study 1:

Maddison, who is in his 20s, fled to Canada in June 2022 by applying for an open work permit. He graduated in 2018 and was a teacher in Hong Kong. He is having difficulty with the 5 year restriction of the Hong Kong Pathway as he must fulfill the requirement of Stream B before September 2023. He only had two months to find a job, by which point he must be employed for a year, in order to meet the criteria of Stream B.

He was forced to get a minimum paid job in a restaurant, an industry in which he had no prior experience nor career plans, and will not be able to quit that job and pursue his career due to the time limit. He thinks it is a waste of his talent and also his education background.

Case study 2:

Angel obtained her degree in Aquaculture in 2016 and was able to get a related job while she was in Hong Kong. She has now relocated to Canada through the Open Work Permit scheme, but is not able to apply for Hong Kong Pathway due to the 5-year restriction. She is now working in a restaurant, and is hoping to apply for permanent residence through Express Entry.

³<https://www.hongkongwatch.org/all-posts/2021/11/27/as-parliament-prepares-to-vote-on-amendment-to-allow-young-hong-kongers-to-access-bno-scheme-new-report-shows-young-people-account-for-93-of-those-charged-in-protest-cases>

Case study 3:

Lilly submitted her application in March and got approval in late May 2021. She got a bachelor's degree in 2016. She managed to meet the 5 year deadline to apply for the Open Work Permit, however she was not eligible to apply PR via stream B even when the route was first announced as it was impossible for her to get 1-year's worth of work experience and still have her degree/education finished within the 5 years time frame.

Lilly and her boyfriend had already resigned from their jobs and bought a plane ticket to Canada in late May 2021, when they learnt the news that they were not included under the pathway. Given the worsening political environment, they decided to leave Hong Kong for good.

Her boyfriend was previously arrested during the 2019 movement and the couple reported being followed by the police, they are worried that without a pathway to permanent residency in Canada they will be forced to go back to Hong Kong.

Mental health, career training, and language support

Under the Open Work Permit applicants are treated as economic migrants, despite the fact that they are political refugees and many are frontline human rights defenders with complicated mental health needs. They require mental health support, career training, and language support, which is available to Permanent Residents, refugees, and Ukrainians, but not Hong Kongers under the current scheme.

Case study 1:

Mr. K was arrested in 2019 during the pro-democracy protest movement. As a result of his participation in the protest movement, he was diagnosed with post-traumatic stress disorder, a symptom of which includes being triggered psychologically when he sees flashlights. He was forced to flee to the UK after the National security Law was implied in 2020.

However, he is not eligible for the UK BNO scheme as he was born after 1997. Upon the suggestion of his family, he chose to relocate to Ottawa under the Hong Kong Pathway Stream B.

Mr. K found that there are no suitable or reliable resources for him to seek help for his mental health since his resettlement in Ottawa. It is very difficult for him to find a reliable registered psychotherapist or social worker because of his language barriers. Even though he found one who speaks Cantonese, he is afraid to share his story as it will expose his political stance.

Requirement for a Hong Kong police certificate

Under the current scheme, applicants are required to present a Hong Kong police certificate to prove that they do not have any criminal convictions. This requirement is putting off some Hong Kongers from applying for the scheme, particularly frontline human rights defenders who fear that they may be exposing themselves to arrest if they were to apply for a certificate.

Case study 1:

Max, who is a former District Councilor in Hong Kong, fled to Canada last year after refusing to take oath under the National Security Law now mandated for all public servants, and being involved in numerous protests in Hong Kong throughout 2019 and 2020 that put him at a high risk of political prosecution. He could not apply for a Hong Kong police certificate as it would signify to the government that he had the intention to leave Hong Kong.

Eventually, he wrote a letter to Immigration, Refugee and Citizenship Canada explaining his situation and was able to obtain approval without submitting the police certificate. He believes that people in Hong Kong largely do not have the information about what to do if they cannot apply for a Hong Kong police certificate. Better sign-posting is clearly needed.

Case study 2:

Terrace was arrested in 2020 during the anti-government protest in Hong Kong and was charged with and convicted of “obstruction of public place” and “assaulting a police officer”, which are charges often laid with political motivation against protesters. After serving his sentence, he decided to apply for an open work permit to seek a new life in Canada.

However, his application has been refused by IRCC due to his criminal record though his criminal record was a result of political persecution. Terrace is forced to stay in Hong Kong now and is trying to reapply his OWP with more reference letters.