

LEGAL EYE

by Michael Bergman

Foreigners on Canadian shoots

Associations like the Academy of Canadian Cinema and Television may consider dropping the requirement of Canadian nationality for workers on Genie-eligible Canadian film or TV productions to be a matter of "maturity," but the extent to which foreigners may enter, remain and work outside of their native land is determined by Federal government immig-

ration policy and legislation. Producers of films shot in Canada are particularly affected by immigration policy when it comes to hiring foreigners. Producers look to foreigners in most cases to supply stars or well-known personalities in principally senior creative positions. They do this in the belief that these personages will give their film a better billing and public response.

In film production the mechanics of access to foreign personnel is dependant on both general immigration policy and Canadian Content regulations particular to the industry. The latter serves to delimit the use of foreigners in Canada for a producer interested in Telefilm participation or Canadian television broadcast. As this field encompasses most Canadian producers, the slotting of foreign personnel would only be considered for one or two principal creative positions. Only those producers whose projects are made wholly independent of government funding, tax-shelters, or are not designed for Canadian television, are free

from this first constraint.

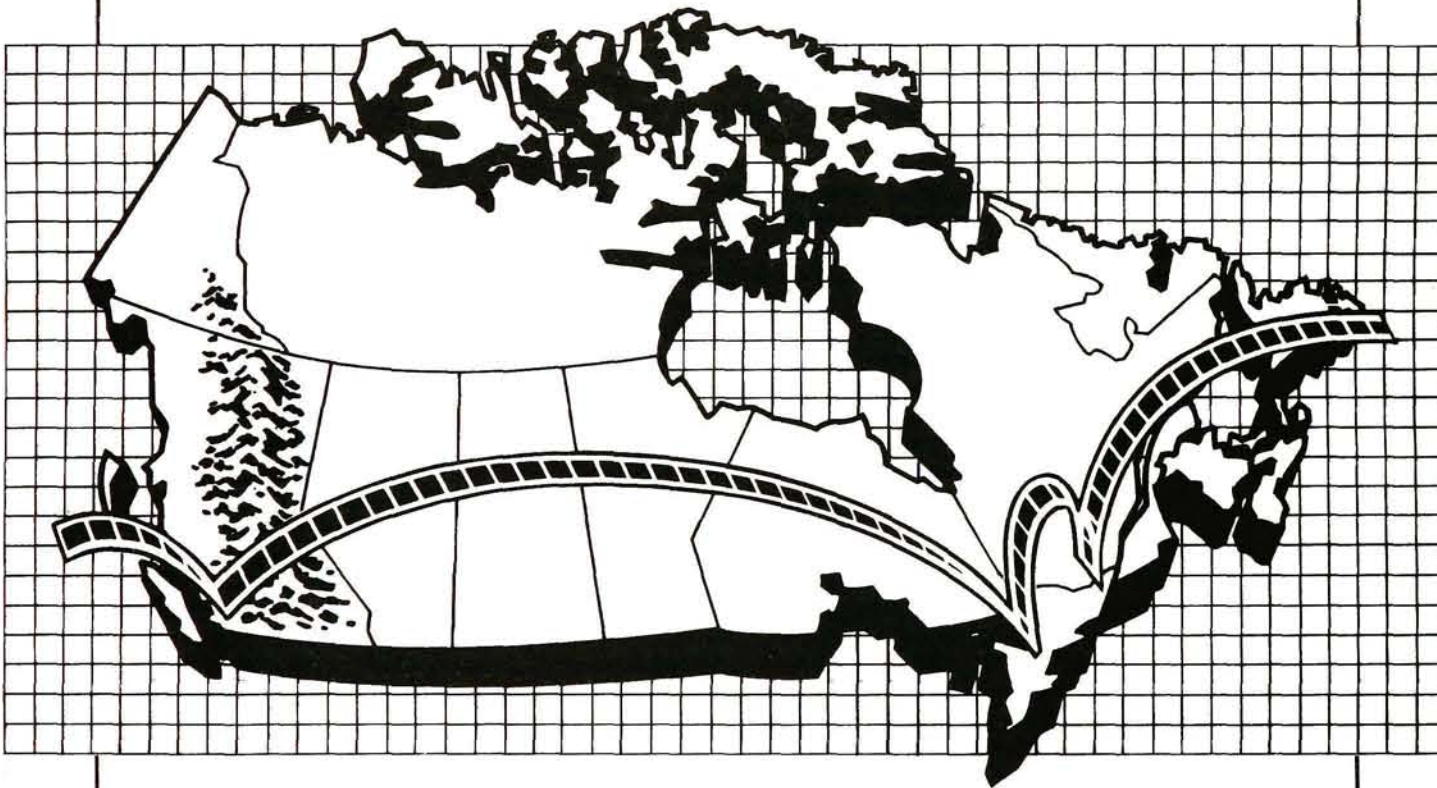
All producers, though, will be faced with the problems of general immigration policy. No foreigner may enter Canada for the purposes of working unless he/she possesses a work-permit or is a permanent resident of Canada. A work-permit allows its holder to enter and remain in Canada for a defined, limited length of time in order to work for a specified employer. A work permit may be issued for up to a 12-month duration. It may be renewed for successive 12-month terms at the discretion of Canadian Immigration. Normally no more than one or two renewals can be expected. Holders of work-permits who cease to work for

the named employer must leave Canada upon the termination of their functions, even if their permit was for a longer duration. Work-permit holders will be entitled to bring their families with them provided this is requested on the original work-permit application. The spouse and children of such an individual will not be allowed to work unless they themselves can obtain a work-permit. Furthermore, they will not be able to attend any schooling unless a student visa for them is requested with the work application. These would normally be issued as a matter of course if the work permit is granted.

Producers wishing to hire foreign personnel must apply in writing on the appropriate immigration form. They are obliged to give reasons why they need a foreigner and to demonstrate that a reasonable attempts to find a Canadian for the position have been unsuccessful. Canada's immigration policy is Canadian first. Immigration will only allow access to foreigners when it can be demonstrated that no Canadians are available for the position or that a foreigner will train Canadians who will ultimately themselves fulfill the job.

The producer's application upon submission to Immigration is referred to the Canada Employment Commission usually called Manpower. With most employers, Manpower in addition to reviewing the attempts the employer has made to seek out prospective Canadians, will post the job with its Employment Centres to see if there are any Canadian takers. In film though, it is recognized by Manpower that film categories are rarely if ever filled by Manpower Centres. Usually the producer's application will be brought to the attention of the appropriate film guild or union who will be asked for their advice. If Manpower is satisfied that a Canadian is available, the application will be rejected. It follows then that if the applicable film guild or union advises that one of their members is available, the application will not succeed. Most film guilds or unions determine requests from Immigration through internal committees who consider which of their members are available, what efforts the producer has made to interview them and why these interviews were not successful and the benefit of the film to their other members assuming the project will not shoot without the requested foreigner. They would also expect the producer to sign their collective agreement and pay a permit fee, sometimes a con-

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siderable amount of money, if their consent is granted.

If Manpower is satisfied that no Canadian is available for the position, they will certify this to Immigration who, in turn, issue the work permit through a Canadian Embassy or Consulate or possibly at the place of entry into Canada. The latter is particularly the case for American workers.

Where Manpower or Immigration rejects the application, it may be possible, where extraordinary circumstances are established, to obtain a minister's permit allowing the foreigner to enter and work. The circumstances of the issuing of a minister's permit are such that they are rarely granted.

Work permits would normally require between four to twelve weeks of processing. In special or urgent cases this delay may be shorter although certainly not in all but the most exceptional, a few weeks will be necessary.

The alternative to the use of a work-permit is to require the foreign worker to become a permanent resident of Canada, sometimes referred to as a landed immigrant. Permanent residency will allow the foreigner to remain and work in Canada indefinitely. His/her spouse and children would also become permanent residents and consequently would not need permits to work or study. The problem, though, with this method is the length of time of processing which could be anywhere from six months to one or more years. Furthermore, the applicant must be considered on a much broader range of criteria including education, language ability, job offers (approved by Manpower as described above) and other discretionary factors. For these reasons producers should usually consider permanent residences to obtain foreign personnel only in the case of projects of extremely long duration or permanent and indefinite employ-

ment.

Foreigners and the employers in Canada who do not possess the appropriate permit will face serious sanctions. It is an offence for a foreigner to work in Canada without status. A foreigner so found if charged and convicted may be fined

and/or jailed. This individual will also be subject to deportation. A person ordered to be removed from Canada, depending on the type of removal order, may never be able to enter Canada again without the minister's permission. Employers knowingly hir-

ing illegal foreigners who work in Canada may also be charged under the Immigration and if convicted could be fined and/or jailed.

It is obvious that the successful use of foreign employees on Canadian productions requires careful planning and

consideration to insure the insurance of the appropriate permits without undue delay.

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Gruben wins prize

VANCOUVER — Patricia Gruben's first feature film, *Low Visibility*, has won the George Ellis Cinema Award for outstanding dramatic film at the Atlantic Film Festival. The award was accompanied by a \$400 prize.

Low Visibility has also been screened at the Festival of Festivals in Toronto, the Festival du nouveau cinéma in Montreal, the United States Film Festival (sponsored by the Sundance Institute) in Salt Lake City, Utah, and the Santa-Fe Film exposition.