

Comments on Employment and Social Development Canada Discussion paper

“Regulatory proposals to enhance the Temporary Foreign Worker Program and International Mobility Program compliance framework”

**Submitted by OCASI – Ontario Council of Agencies Serving Immigrants
October 16, 2014**

Introduction

OCASI – Ontario Council of Agencies Serving Immigrants is concerned about the human rights of migrant workers in Canada. These workers are an important part of Canadian communities and our economy, and deserve to be treated in a fair and equitable manner while having their rights recognized and respected. We welcome the opportunity to provide input on this discussion paper.

Workers classified as ‘low-skilled’ in the Temporary Foreign Worker Program (TFWP) and Live-in Caregivers are particularly vulnerable to abuse and exploitation, factors that are widespread and well-documented by many credible researchers (e.g. Faraday 2014 & 2012, Hennebry 2012, UFCW 2011, among others). This discussion paper by Employment and Social Development follows the announcement of an ‘overhaul’ to the Temporary Foreign Worker Program announced in June 2014 by Ministers Jason Kenney and Chris Alexander, and earlier federal government consultations held in May 2013 and in the Summer of 2011.

We are encouraged at the government efforts to increase accountability in the program, particularly to impose consequences for non-compliance by employers and welcome this opportunity to provide comments on the proposed compliance framework. While the proposed changes are intended to increase compliance by employers, there is a potential for negative impact on migrant workers themselves. We caution that any reform should be mindful of all the consequences for migrant workers, especially changes that will unintentionally increase their vulnerability to further abuse and exploitation.

Compliance Framework Penalties

The proposed compliance framework does not adequately recognize the severity and prevalence of abuse towards migrant workers. Section 3.2.3 on Violations lists employment and workplace conditions that must be met by the employer, including wages, occupation, working conditions and “reasonable efforts to provide a workplace free of abuse” – areas that are typically under provincial jurisdiction and subject to provincial enforcement. We encourage the federal government to use the compliance framework as one of several ways to strengthen the relationship with provincial governments with a view to better and more effective enforcement of employment standards and occupational health and safety. In Ontario, there is a need to explore ways to address the enforcement gap in inspecting and enforcing workplace standards for Live-in Caregivers who work in private homes.

Fines

In the severity section of “applying variables”, a violation that involves significant financial harm to a foreign national is allocated +1 to +4 points while a violation that involves the abuse of a foreign national is allocated +1 to +6 points. Financial, physical or psychological harm can have lasting effects on migrant workers and these infractions should be treated with the utmost severity. The range of points does not correspond to the severity of these abuses.

Further, the majority of offences mentioned in the discussion document will not result in a ban. Many will result in only a minor fine to the employer which may not act as a reasonable deterrent. Most problematic is the fact that an employer who has committed one ‘serious’ infraction may be allowed to continue to commit several more similar offences before facing a ban. No recourse is provided for the worker who may be experiencing an increased vulnerability or risk as a result of the employer infraction.

There is a possibility that financial penalties imposed on the employer may be passed onto the worker. Regardless of what the government intends by imposing a financial penalty or cost on the employer, there is a widespread practice of transferring these costs to the worker. In fact when LMIA fees for every temporary foreign worker position was increased from \$275 to \$1,000 in June 2014, it served to increase the financial burden for a significant number of workers rather than act as a deterrent to the employer. The only resource available to the worker is a complaints-driven enforcement mechanism - which has limited effectiveness given the vulnerability inherent in being a migrant worker, and which will prevent most workers from complaining about their situation for fear of reprisals from the employer and potential job loss.

Suspension or revocation of Labour Market Impact Assessment (LMIA)

The proposed compliance framework relies heavily on the suspension or revocation of LMIA's (including suspension during an inspection) and work permits. While the intention is to enforce compliance through the threat of suspension or revocation as it applies to the employer, little thought has

been given to the potential impact on a migrant worker when her/his work permit is suspended or revoked. The worker's legal status in Canada is tied to a valid work permit, which is tied to the employer. A suspension or revocation will leave the worker without legal status in the country through no fault of their own, and in fact render them further vulnerable. Further, workers who are dependent on the employer for housing and means of support – particularly when it is within the terms of employment – will be left without status and income, as well as shelter and food.

Canada's recent experience with a ban on employers of migrant workers imposed in April 2014 saw many workers left without status or resources, and in fact punished for the actions of the employer. We strongly urge a rethinking of this provision so that workers are not once again the inadvertent targets of employer compliance measures. A possible option would be to move to an open work permit system that will allow workers mobility between employers within the same province or the same sector, accompanied by contingency measures to cover the period when the worker is without employment as well as support to find and establish another employer.

Inspections and CBSA role

OCASI welcomes increased inspections of employers as indicated in the June 20, 2014 changes to the Temporary Foreign Worker Program. We caution that providing employers with advance warning could potentially make inspections less effective.

We remain deeply concerned about the proposal that Canada Border Services Agency (CBSA) will be involved in inspecting suspected cases of offences by employer under the IRPA. CBSA's central role is not consistent with a mandate to protect migrant workers when employer abuse is suspected. In fact a recent CBSA operation in Toronto undertaken in concert with the provincial Ministry of Transportation demonstrated that enforcement is more likely directed at checking migrant worker status in Canada, rather than making protection from abuse a priority. There is a need for further thought on how CBSA is to carry out its mandated IRPA role, while not making migrant workers further vulnerable to abuse and exploitation.

Areas not included in the compliance framework

Housing - For programs that require the employers to provide housing or make housing arrangements for workers, inadequate, unsafe and unsanitary housing should be included as a violation. Inappropriate and unsafe housing is a common challenge for migrant workers. Employer-provided housing should be inspected regularly, and employers should be held accountable for providing sub-standard housing.

Recruitment Fees - Employers that recuperate fees related to hiring costs from employees, or who engage other actors who charge recruitment fees should face consequences. Migrant workers are often charged fees by many different actors to secure their employment in Canada. Workers should be better protected from this type of abuse and any employers involved should face consequences for exploiting

workers. We encourage the government to consider employer and recruiter registration, and find ways to financially assist migrant workers who have been charged fees.

Conclusion

There is a place for a temporary migrant worker program in Canada's mix of immigration programs. However the levels of temporary foreign worker recruitment we have seen over the last decade and representation of sectors speak more to the need to open up permanent residency in more low-skilled occupations across a range of sectors – particularly in Ontario where permanent residency has decreased while at the same time temporary migrant worker numbers have increased. Permanent Residency leading to Citizenship must always be the foundation of Canada's immigration and protection programs, just as reducing worker vulnerability should be part of any of our labour market programs.