



August 15, 2019

Via email: IRCC.TempResRegulations-ResTempReglement.IRCC@cic.gc.ca

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Dear Uttara Chauhan and Jordan Thompson:

Re: Canada Gazette, Part I, Volume 153, Number 25 – Occupation Specific Work Permits

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) in response to a notice in Part I of the Canada Gazette, *Introducing occupation-specific work permits under the Temporary Foreign Worker Program*.¹ Immigration, Refugees and Citizenship Canada (IRCC) and Employment and Social Development Canada (ESDC) are seeking comments on a proposal to amend the *Immigration and Refugee Protection Regulations* to allow occupation-specific work permits (OSWP) to be issued under the Temporary Foreign Worker Program (TFWP).

The CBA is a national association of 36,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,000 members practising all areas of immigration law. Our members deliver professional advice and representation to thousands of clients in Canada and abroad.

Main Recommendation: Improving Processing Times Instead of Introducing OSWPs

If the intent of the OSWP is to give Temporary Foreign Workers (TFWs) easier and faster options for changing employers, we recommend that the government focus on improving processing times to obtain new work permits rather than creating a new program, which would require significant resources and could have unforeseen consequences and create new risks of abuse.

TFWs across all streams can already move between employers with valid Labour Market Impact Assessments (LMIA). The extent of this mobility varies. For example, the Seasonal Agricultural Worker Program (SAWP) already gives OSWPs coupled with a streamlined transfer mechanism,

¹ Canada Gazette, Part I, Volume 153, Number 25, June 22, 2019, [Notice to interested parties — Introducing occupation-specific work permits under the Temporary Foreign Worker Program](#).

while agricultural and low-wage streams allow TFWs to request a transfer to another LMIA-approved employer with the processing of a new work permit.

We believe a concerted focus on expedited work permit processing, supported by consistent service delivery standards, is the best way to promote TFW mobility. This approach would ensure TFWs remain in approved workplaces subject to TFWP oversight mechanisms.

While we oppose the proposal for OSWPs, we offer suggestions for improvement in case the government moves forward with this proposal. For ease of reference, our comments respond to the questions in the notice.

(1) Would an occupation-specific work permit increase the likelihood that foreign workers would seek out better job opportunities within their occupation? What barriers to mobility would persist?

While OSWPs would reduce barriers to mobility, TFWs with OSWPs would continue to face barriers to mobility beyond those faced by Canadians and permanent residents.

TFWs would still need to obtain a job offer from an employer with a valid LMIA, which limits their options. The LMIA requirement will restrict TFWs ability to test the market as their wages will be tied to the LMIA wage regime. TFWs may also have difficulty identifying employers with valid LMIAs unless a mechanism is created to connect them to these employers.

The LMIA requirement is needed to prevent employers from using the OSWP mechanism to circumvent other TFWP rules or to create competition for Canadians seeking employment. This requirement also allows for closer monitoring of employer compliance.

Vulnerable TFWs may lack the education and information needed to compare different job opportunities and decide which is better for them. For example, a TFW may be enticed by a recruiter to accept a position in a city that offers a few more cents an hour in wages without appreciating that their current position in a rural community offers benefits such as a potential path to permanent residency.

(2) What positive impacts would this occupation-specific work permit have for temporary foreign workers? What concerns or challenges would it pose, and how could these concerns be mitigated?

The OSWP would reduce costs and processing times for TFWs as they would no longer need to obtain a separate work permit if their prospective employer has a valid LMIA. TFWs may be more willing to leave abusive or poor work environments if they have reduced barriers to changing employers and a clear path to finding new employers with LMIAs.

There is a risk that TFWs may not know whether employers they are considering possess valid LMIAs. Employers may not understand they need a valid LMIA to extend a job offer to a TFW. If the work permit states that it is occupation-specific, an unsophisticated employer may mistakenly assume they can hire a TFW in that occupation without securing LMIA approval. An unscrupulous recruiter may convince a TFW to take a job from any employer without appreciating the required LMIA process. By taking a position without an LMIA, the TFW could disappear from government oversight and be at greater risk of abuse.

The government could mitigate these concerns through an education campaign about the program, but it will be challenging to inform unsophisticated parties about this complex program.

(3) What positive or negative impacts would this work permit have for employers and Canadian and permanent resident workers in Canada?

While the program would allow employers to onboard TFWs who are already in Canada and hold OSWPs more efficiently, the OSWP may nonetheless fail to meet employers' needs.

The LMIA process is a significant investment for employers, who expend time and resources to train employees. For example, farm employers pay between \$8,000 to \$12,000 per worker in costs associated with TFWP employer obligations.² With the OSWP, an employer could make a significant investment in the LMIA process, only to see TFWs leave their position shortly after to work for another employer. The high costs of the process could potentially bankrupt employers, especially small employers who pay for transportation, recruitment and other skills training costs for TFWs.

Employer-specific work permits give employers the predictability needed to meet critical labour needs. The OSWP could make it harder for employers to retain their employees and exacerbate labour shortages. With the departure of a TFW, an employer would be left to restart the recruitment process. With labour shortages across most regions of Canada, employers may have difficulty filling a vacancy with a Canadian, permanent resident, or another TFW.

The OSWP may also have a negative impact on TFWs. With increased mobility, there is a greater likelihood that TFWs will leave their employment, which could make employers more reluctant to extend permanent job offers and support TFWs in seeking permanent residency.

(4) Should there be a designated time period (e.g. first two months after starting a job contract) when foreign workers are not permitted to change jobs?

The CBA Section recommends a designated period of at least six months where TFWs would not be permitted to change jobs unless they obtain a new work permit. TFWs facing abuse would not need to wait the designated time as they would be eligible for open work permits for vulnerable workers.³ The designated period would recognize the significant investment employers make to obtain LMIAs and offer some stability to employers while giving TFWs the flexibility to change employers if needed. We also recommend a tracking mechanism that requires employers to register the employment relationship so the designated period can be monitored.

If an employer solicits TFWs from their competitors for a slightly higher wage and the new employer reaps the benefit of out-of-pocket expenses incurred by the first employer, including the costs of the TFW's flight, recruitment and work permit, the subsequent employer should be required to reimburse the initial employer a portion of or all of their costs.

² [Addressing Labour Shortages in the Agriculture & Agri-food Industry through a National Workforce Action Plan](#), Labour Task Force, (2013); [Multiplying Mushroom Sector Opportunities with Rural Canadian Population Growth](#), Canadian Agricultural Human Resource Council (2017).

³ [Vulnerable foreign workers who are victims of abuse](#), Immigration, Refugees and Citizenship (2019).

(5) Would additional supports be required to help temporary foreign workers find a new employer in Canada with a valid Labour Market Impact Assessment in their occupation? If so, what kind of supports should be considered and who should provide them?

The CBA Section recommends establishing a database to match TFWs in Canada with employers with valid LMIAs. The database would give employers and TFWs accurate information and would reduce the risk of TFWs being persuaded by unscrupulous recruiters to take jobs from employers who do not hold valid LMIAs. Only employers with valid LMIAs would have access to the database.

The government should enhance communication to TFWs, with materials in many languages outlining TFW mobility options in all program streams and how to access those options. These communications should also describe workplace protections in provincial legislation such as prohibitions against employer reprisals (as in Ontario's *Employment Standards Act*).⁴

If an OSWP is introduced for seasonal users of agricultural and low-wage program streams, the government should assess the best practices associated with transfers in the SAWP and adopt these practices in other streams. This would include holding annual meetings with stakeholders to assess overall program efficacy, giving an opportunity to review contracts, and responding to changes in policy, programs or the broader labour market.

The government should also consider creating an independent liaison service for all program streams outside of SAWP with similar functions to consular liaison officers in SAWP. An independent liaison office would have a mandate to offer conflict resolution services, contribute to overall program oversight (including approval of transfers), and provide communications support to assist TFW seeking mobility from their current workplaces. This office would also offer an ombudsman-like function for employers and TFWs seeking to appeal results of integrity inspections, particularly those triggered by abuse complaints. The office's independence would enhance the trust of TFWs and employers in the broader TFWP and associated integrity regime.

(6) With greater mobility of foreign workers, what kind of mechanisms should the departments consider to track foreign workers and their new employers for compliance purposes?

We recommend that the OSWP clearly state as a condition that the work authorization is only for an employer holding a valid LMIA for the specified occupation. IRCC or Service Canada (SC) should establish a monitoring system to verify that TFWs continue to occupy the authorized occupation with any subsequent employer and that they remain employed by employers holding valid LMIAs.

Both TFWs and employers should have reporting obligations. We suggest that:

- When hiring an OSWP-holder, a new employer could be required, within 10 days of the hire, to provide the contact information of the TFW, work permit number, SIN and LMIA #, and to confirm the intended duration of the employment, location, position, main tasks, salary and other working conditions.
- Each employer (initial or subsequent) could be required to report electronically to IRCC/SC via an online form or their account on the IRCC portal the date and reason for the end of an employment relationship with the holder of an OSWP within 10 days.

⁴ *Ontario Employment Standards Act*, S.O. 2000, Chapter 41 at s. 74.

- Prior to accepting a new job offer, OSWP-holders could be required to report to IRCC/SC electronically with the contact information of their new employer. They could then obtain a copy of the LMIA and full details about the approved employment conditions. This information would allow TFWs to verify the authorizing conditions of their employer.
- Companies employing OSWP-holder could be required to regularly give IRCC and/or SC the list of OSWP holders employed during that period and the LMIA # for each TFW.
- If OSWP-holders leave Canada when their work permit expires or earlier, they could be required to notify IRCC/SC of details of their last Canadian employment and the LMIA #.

To successfully implement these reporting mechanisms, community organizations and NGOs will likely need to inform and support OSWP holders.

(7) Is there a need to clarify or amend the responsibilities of employers and foreign workers in light of this new work permit?

The rules and mechanisms of the new OSWP stream should be clearly communicated to TFWs when they apply for a permit and to employers applying for an open LMIA. Efforts should also be made to reach out to employers who are not regular users of the TFWP but may consider hiring an OSWP-holder. TFWs should receive detailed information about the limits of their ability to change employers, their responsibility to ensure any future employer holds a valid LMIA for their occupation, and their reporting obligations if they change employers. In addition to a condition that the permit is valid only for an occupation in which an LMIA has been granted, as suggested in the response to Question 6, the OSWP could bear an explicit warning to employers that they should seek advice if in doubt about their ability to hire the permit holder. This may help avoid situations where a TFW is hired by an employer in good faith but with no LMIA, as the employer believed the permit holder could work in the occupation stated on the permit without an LMIA.

Employers applying for open LMIA's should be clearly informed of the legal options TFWs with OSWPs have to leave them for another employer and should be warned that inappropriate or abusive behaviors on their part may lead to complaints and sanctions. They should also be reminded that all obligations arising from the approved LMIA apply for any new employment relationship they enter with a TFW for the specific occupation.

We recommend that third parties such as recruiters be prohibited from being employers of record on work permits, even if they facilitate payroll. This prohibition would make it clear that employers are responsible for compliance and could potentially be held liable for breaches. It would also help protect TFWs from unscrupulous recruiters.

(8) Should additional changes be made to the work permit process to further support foreign worker mobility?

Improving Processing Times

A current barrier to TFW mobility is the processing times for a new LMIA and work permit. Assuming employers have or can obtain blanket LMIA's, there should be any easy method to add a name to an LMIA with service standards of 48 to 72 business hours. We also recommend that the government develop innovative ways to vary work permits. Driving to a border to flagpole should not be the primary alternative to online filing.

We recommend allocating dedicated resources at local IRCC offices or processing centres for these cases, and that IRCC consider mobile offices where officers come to TFWs. For example, the Philippines Government sends representatives from its Consulate in British Columbia to Yellowknife to process passport extensions. IRCC could do something similar. Since low skilled workers and agricultural workers may not have the internet and computer access needed to file online applications, having IRCC officers come to them may expediate processing. Alternatively, SC could approve and issue a new work permit when a TFW comes to a SC office with a new LMIA.

Encouraging TFWs to Obtain Legal Advice

It is often difficult for TFWs, many of whom are unsophisticated and do not speak English or French as their first language, to understand program rules and processes. Many employers relying on TFWs are owner/operators or small companies that do not have the resources to assist TFWs with applications or point them to the IRCC website.

The government could consider designating duty counsel to assist TFWs with their paperwork and reviewing their unique immigration circumstances. Guidelines on the scope of the program could be established, potentially including a one-on-one consultation with the lawyer and a follow-up review of the application before it is filed. The CBA Section could help IRCC develop a network of qualified immigration lawyers that could assist with these cases. Alternatively, lawyers or law firms could make proposals to be preferred service providers to assist TFWs based on a fixed fee rate for a guaranteed volume of cases. These proposals could include translation since many lawyers are multilingual or have staff that are.

Some recruiters and consultants take advantage of TFWs or offer them inadequate representation. IRCC should dedicate resources from the \$51.9 million allocated in budget 2019 for protecting people from unscrupulous immigration consultants to educating vulnerable TFWs and employers.⁵

Simplifying the Process for Visa-Required Foreign Workers

Many TFWs come from countries requiring a visa so when a work permit is extended, the Temporary Resident Visa (TRV) does not correspond with the new work permit's validity. This inconsistency imposes a cost on the TFW on top of the cost to vary and extend a work permit. It also places a burden on TFWs who may want to travel home for a family emergency but find they cannot return to Canada without first applying for a new TRV. TFWs may decide not to travel for fear they would not be permitted to return. IRCC should have the Case Processing Centre Edmonton issue corresponding visas as visa offices do when a work permit is extended.

Aligning with Provincial Nominee Programs (PNP)

While many PNP programs allow low skilled workers to be nominated, PNP program requirements are often inconsistent with the validity of the initial work permits issued. Because SC only issues LMIA's with a maximum one-year validity to low skilled workers, if the PNP program requires one year of Canadian work experience before the TFW qualifies, it may be difficult for a TFW to qualify and maintain status while the PNP application is considered. Sometimes processing the PNP takes longer than anticipated and the TFW must apply to extend their stay in anticipation of the PNP being approved. If the extension is processed before the PNP certificate is issued and matched up with the extension application, the TFW falls out of status.

⁵ [Budget 2019](#), Investing in the Middle Class (2019) at 185.

We recommend that IRCC issue a directive to put a temporary hold on an application to facilitate the processing of the PNP application. We also suggest that it develop a way to match the PNP with the extension application. For example, the officer could call the TFW. Guidelines could also help clarify these situations.

(9) Are there particular considerations for specific Temporary Foreign Worker Program Streams that need to be taken into account when designing an occupation-specific work permit?

Consideration should be given to minimizing separation of TFWs from their families. For example, we recommend mitigating time in “implied status” where TFWs cannot travel or building in opportunities for TFWs to return home without losing their status or program eligibility. We also suggest enhancing settlement services to give TFWs information including how to obtain a SIN and set up a bank account, eligibility for health insurance, and filing tax returns.

Other Comments

OSWPs may undermine the employer vetting process of some other countries. For example, the Government of the Philippines vets TFWP employers in Canada before the recruitment process and before workers are granted exit visas. OSWPs would prevent the Philippines and any other country with similar practices from vetting and monitoring initial employers of TFWs.

We recommend that IRCC and ESDC enhance mobility for TFWs by improving processing times rather than introducing OSWPs. We would be pleased to meet with IRCC and ESDC to clarify our recommendations, and to give further feedback when more details are available.

Yours truly,

(original letter signed by Nadia Sayed for Marina Sedai)

Marina Sedai
Chair, CBA Immigration Law Section