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RHYME & REASON

Recent Changes to the Temporary Foreign Worker Regulations

Recent changes introduced to Canada's Immigration and Refugee Protection Regulations relating to temporary foreign workers (TFW) have been raising a lot of fear and confusion within the caregiver community.

Foremost of these fears is the persistent rumor that "live-in caregivers are not anymore eligible to apply for permanent residence in Canada". Another is the speculation that live-in caregivers will be deported to their home country if at the end of four years, their permanent residence applications under the live-in caregiver class have not been granted.

What really is the current state of the law as far as LCP participants are concerned? What are these recent changes which have brought much confusion to many?

Since I have already summarized the administrative and regulatory changes to the LCP in my April 2010 column, I am simply summarizing below the recent regulatory changes to the temporary foreign worker program, and the relevant clarifications received from CIC.

In August 2010, CIC announced and published the revised Immigration and Refugee Protection Regulations which affect TFWs in general and are set to take effect on 1 April 2011. The CIC website summarized the changes as follows:

- *a more rigorous assessment of the genuineness of the job offer;*
- *a two-year prohibition from hiring temporary foreign workers for employers who fail to meet their commitments to workers with respect to wages, working conditions and occupation; and*
- *a limit on the length of time a temporary foreign worker may work in Canada before returning home.*

The new regulations will screen prospective employers more strictly in that those who were found to have violated workers' rights or failed to meet their employer obligations in the past will be placed on a "blacklist" and will not be allowed to hire or sponsor any foreign worker for a period of two years.

The most controversial part of the new regulations however is the new four-year cap on the TFWs' temporary employment in Canada. At the end of four years, the TFW will have to leave Canada and can only reapply for a new work permit after another four years have passed. It must be noted that this limitation stated in Section 200(3)(g) of the new regulations also provides for a couple of exemptions if:
(ii) the foreign national intends to perform work that would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents, or
(iii) the foreign national intends to perform work pursuant to an international agreement between Canada and one or more countries, including an agreement concerning seasonal agricultural workers;

The above exemptions however, do not expressly specify LCP participants as among those meant to be included in their scope. Hence, the persistent fear that after four years of working on LCP or open work permits, LCP participants may not anymore be allowed to stay in Canada to await the processing of their permanent residence applications or worse, that their permanent residence applications will be refused once they are forced to leave Canada at the end of their maximum four-year stay as TFWs.

After sending an inquiry to CIC to clarify this matter, we received the following response:

Operational guidelines, that provide more specific information including for all exemptions to R200(3)(g), are being developed and will be available to potential participants prior the regulations coming into force April 1, 2011. Consideration for exemption is being given to various categories of temporary foreign workers, including live-in caregivers.

Preliminary thinking is that it is not expected that R200(3)(g) would affect participants in the live-in caregiver program who have applied for permanent residence. We are developing guidelines to identify exemptions to the R200(3)(g) requirement, and anticipate that applicants for permanent residence, or those who have applied for permanent residence and received approval in principle, will be excluded. That would mean that once a live-in caregiver has two years of work experience and applied for permanent residence/received approval in principle, the four-year maximum would not be applicable.

The live-in caregiver program is designed to allow its participants to apply for permanent residence well before they would reach the maximum four years of non-permanent status. As you know, the Government of Canada has recently made it easier for live-in caregivers to become permanent residents by allowing up to four years to accumulate two years or 3900 hours of work experience. The regulatory change to the Temporary Foreign Worker Program R200(3)(g) is not intended to diminish the changes made to the Live-in Caregiver Program in April 2010.

The above statements were confirmed in the following further clarification from CIC policy officials:

There are two exemptions to the four-year cumulative duration provision, as identified in S200(3)(g) of the amended regulations: for work that would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents, or for work pursuant to an international agreement between Canada and one or more countries. More specific information will be provided in the form of operational guidelines. These are being developed and will be available prior to the regulations coming into force April 1, 2011.

With regard to those temporary foreign workers who have applied for permanent residence, the intent of the regulatory amendments is not to require applicants for

permanent residency to leave the country. It is likely that a temporary foreign worker, whether employed as a live-in caregiver or in another capacity, who has applied for permanent residency will qualify for an exemption pursuant to section 200(3)(g) of the regulations, until such time as a decision on the application for permanent residency has been made. Full details will be available in the operational guidelines referred to above.

These responses should serve to at least assuage fears that LCP participants will be negatively affected by the recent regulatory changes affecting temporary foreign workers in general. Aside from the need for continuing vigilance to ensure that the operational guidelines will truly benefit LCP participants, we also need to keep in mind that these changes are only as good as their proper and fair implementation.

Therefore, the campaign towards the full realization of substantive reforms on behalf of long disadvantaged caregivers needs to continue. For now, we should preserve the gains achieved so far not only by continued vigilance but also by arming ourselves with the proper information instead of relying on rumors and speculation.

The author is an immigration lawyer in Toronto and may be reached at deanna@santoslaw.ca.