

Major Changes to the Temporary Foreign Worker Program; the LCP is Next?

On 20 June 2014, the Canadian government unveiled major changes to Canada's temporary foreign worker program (TFWP) which were essentially meant to limit access to the program and to encourage employers to prioritize hiring Canadians and permanent residents.

The TFWP was reorganized into two categories: the International Mobility Program (IMP) and the TFWP. The TFWP now refers to workers who require a job offer which was confirmed through a labour market impact assessment (LMIA). The LMIA, formerly called the labour market opinion (LMO), is a more rigorous assessment of the job offer to ensure that Canadians and permanent residents are given a first opportunity at obtaining the available jobs before they are offered to foreign workers.

The IMP on the other hand, refers to those streams of foreign workers who do not require an LMIA before being issued a work permit. These include work permits issued under Canada's free trade agreements or working holiday programs which offer reciprocal opportunities for Canadians wishing to work overseas.

The new LMIA that replaced the old LMO system has the following new features:

- the LMIA application processing fee has been increased from \$275 to \$1,000 per foreign worker. Employers seeking to hire primary agriculture workers, including those under the Seasonal Agricultural Workers Program, are exempt from this fee.
- Wage levels will now replace the National Occupational Classification as the main criteria for classifying jobs. Those for which wages are below the provincial or territorial median wage will be considered “low-wage” jobs, while those being paid at or above the provincial/territorial median will be considered “high-wage” jobs. In Ontario, the current median wage is \$21 per hour.
- Employers with 10 or more employees applying for a new LMIA for low-wage temporary foreign workers can only hire temporary foreign workers for up to 10 percent of their workforce
- Applications for the lowest-wage, lowest-skill, entry-level occupations in the food services, accommodation and retail trade sectors will be barred from the TFWP in areas of high unemployment (6 percent or higher)
- LMIA's for low-wage temporary foreign workers will be reduced from the current two-year standard duration to one-year periods (except agricultural workers and live-in caregivers)
- To reinforce the temporary nature of the TFWP, the cumulative period during which general low-wage temporary foreign workers will be allowed to remain in Canada will be reduced
- Employers seeking to hire high-wage temporary foreign workers (with very limited exceptions) will be required to submit transition plans to demonstrate how they will increase efforts to hire Canadians, including through higher wages, investments in training and more active recruitment efforts from within Canada.

To improve the enforcement of the new rules, the government has vowed to:

- increase the number and scope of inspections of workplaces for those participating in the TFWP
- expand the TFWP tip line and create a complaints section
- expand the blacklisting of employers who violate the TFWP or the terms of their previous LMIA's
- increase fines of up to \$100,000 for violations of the program.

Similarly, participants under the IMP will be subject to the following changes:

- employers of LMIA-exempt foreign nationals will be required to submit their job offers directly to CIC
- employers will be asked to pay a \$230 compliance fee per employer-specific work permit that is LMIA-exempt
- a privilege fee of \$100 will be required from every open work permit holder

Shortly after this announcement, the ESDC Minister Jason Kenney made not-so-subtle hints that the Live-in Caregiver Program (LCP) will be next in line for a possible major overhaul. In his recent media interviews on this subject, Minister Kenney said that the LCP "has gone out of control" with insinuations that the program has become an alternative family reunification program. The Canada Border Services Agency (CBSA) has likewise been issuing press releases about ongoing investigations of so-called "runaway nannies" who allegedly abandon their employers upon arrival.

These media statements raise strong suspicions that the LCP will either be seriously reformed or even scrapped altogether. If this is true, are those allegations as serious and widespread as they are made out to be? If so, do they serve as fair and adequate basis to eliminate a program which has not only benefited its caregiver participants and their accompanying dependent families, but more importantly, the families of their employers whom these caregivers have dutifully served for all the years that the LCP has existed?

While it may be true that there are bad apples who may have abused the program, there is no reliable data to prove that they comprise a substantial enough number to lead to another major overhaul or even the scrapping of the program. If the allegation that the LCP is becoming a family reunification program is true, this partly resulted from the bureaucratic inefficiencies in processing applications. That is, the very long delays in issuing work visas (can take up to a few years from the Manila visa office for instance), has discouraged many Canadian employers from hiring prospective caregivers from such countries. Thus, many of the remaining prospective employers are the relatives who are willing to put up with the delay in exchange for ensuring that their children, elderly or disabled family members will be left in the care of people they completely trust, i.e. immediate or extended family members.

Moreover, there is nothing in the law which prohibits the hiring of relatives under the LCP. As long as the prospective caregiver and the prospective employer meet the qualifications and the job offer is made in good faith, their kinship should be an irrelevant factor.

The issue of so-called runaway nannies is also another example of a few bad apples prejudicing the majority who abide by the rules. If there are truly such cases, then the solution should focus more on fair and proper enforcement and not by simply assuming that the majority of the LCP participants are as unscrupulous as the few guilty ones.

Thus, it is hoped that the anticipated reforms to the LCP will fully take into consideration the systemic issues which lie at the root of the problems within the program, rather than be another knee-jerk response to negative publicity. If the program is scrapped, it should be replaced by something far more equitable and humane than the LCP in its current form.

Live-in caregivers who have diligently served countless Canadian families and sacrificed so much in the process, deserve nothing less.

The author is a Filipino-Canadian immigration lawyer and may be reached at deanna@santoslaw.ca or tel. no. 416-901-8497.