



TEMPORARY FOREIGN WORKER PROGRAM

Ontario Regulation of Recruiters

Presented by:

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I. EXECUTIVE SUMMARY

The Temporary Foreign Worker Program (TFWP) has evolved over the years to meet the demand of Canadian employers for skilled and unskilled labour. There is no doubt that in a few years, most of the economic growth will have to be supported by Temporary Foreign Workers (TFW's).

The program requires the involvement of several government departments, both at the federal and provincial levels, and third parties who operate in Canada and in source countries.

Because of its complexity and lack of coordination between the stakeholders, the TFWP has been hampered by inefficiencies and undesirable consequences. It is now time to overhaul this program and implement changes that will better address the needs of both the TFW and the employers. Above all, we need a new mechanism for getting the TFW into Canada effectively while ensuring the success of their placements.

The main objective of this proposal is to introduce a mechanism which will maintain the integrity of the program by eliminating many of the causes of abuse and misuse, thus making it more transparent and efficient. The mechanism will allow for timely access by employers to qualified TFW's, while offering labour mobility and protection to the TFW.

This proposal begins with a look at the major current issues such as:

- Issues with Service Canada
- Unclear interpretation of the requirements and regulations when assessing applications for work permits
- Opportunities for abuse of the program by recruiters, employers, and TFW's
- The controversial issue of payment for services by the TFW's
- Long processing times at visa offices around the world
- Processing delays in Canada for workers who want or need to change employers
- Inadequate protection for TFW's in abusive situations
- Lack of effective enforcement capabilities of HRSDC and CRA

We offer a proposal that we believe would help resolve many of the discussed issues. Some of these recommendations may require legislative changes at all levels.

Finally, we look at the benefits that these new recommendations would offer and discuss their financial feasibility.

II. DEFINITIONS

Recruitment

The process of finding and selecting qualified employees. This includes

- process of searching
- matching
- interviewing
- verifying credentials
- testing skills as required
- checking references

Recruitment Related Services

Services that are in support of an individual's desire to be recruited for employment, but are not core or directly essential to it. Unlike services listed above that are demanded by the employer, these services are for the benefit of increasing a potential worker's ability to be placed. Such services include

- resume assistance
- interview preparation and coaching
- orientation on Canadian culture and social structure
- language tutoring

Foreign Worker Recruiter

A person, who being retained by the employer seeks and recruits a foreign worker that qualifies for the position defined by the employer. He charges the employer for his services. He must be a Canadian citizen or PR with an established residence in Ontario.

Foreign Recruiter Agent

A person working for the Recruiter who is located abroad and is assisting the Recruiter with locating qualified workers. His activities are the full responsibility of the Recruiter.

Authorized Representative

A person licensed to provide services related to immigration process (a member of a Law Society, member of Quebec Chamber of Notaries, member of Canadian Society of Immigration Consultants).

III. RECOMMENDATIONS

- 1) Create a TFW Registration system within the MOL. This would be a system that stores information on TFW's and their employers, and when necessary shares this information with other stakeholders such as CIC, HRSDC and CBSA.
- 2) Require all employers that hire TFW's to register, and to provide relevant updates such as when a worker is hired, when a job offer is cancelled, or when a worker resigns.
- 3) Recruiters of TFW's should be licensed, and while they may be Authorized Immigration Representatives, it should not be required that they be so. Recruiters should be licensed and regulated in one province but should have the right to work with employers in other provinces with minimal red tape. Recruiters working outside of Canada for Canadian employers must be licensed, and must be Canadian citizens or Permanent Residents. Those that are not licensed must be acting as an agent for a licensed Canadian recruiter, who is fully responsible for their conduct.
- 4) Recruitment services, as defined in this paper, should be the sole financial responsibility of the employer. Only the employer may be charged for these services.
- 5) Employees may be charged for Recruitment Related Services that are not required by the employer, but rather are to increase the chances of a successful placement for that individual worker. These services must be optional, and must be presented to the employee as voluntary. It is suggested that a list of such services and a non-binding fee list be supplied so that potential workers are aware of what are fair prices for these services.
- 6) Written agreements are essential to inform employees of their rights in the recruitment process. Additional information regarding Canadian labour laws must be provided to employees.
- 7) Partnership between CIC and HRSDC is essential in order to determine whether recruiters were used, and whether services were provided according to these regulations. LMO applications should include a question whereby the registration number of the licensed recruiter or non-use of an outside recruiter is declared.
- 8) In the case of TFW's at the NOC O, A, B (professional and skilled occupations) employers should have the right to recoup costs such as air fare/first month's accommodations through deductions at source should they so desire. This should be done over a reasonable period of time such as 12 months.
- 9) Foreign workers have to be guaranteed the right to use services of an authorized representative to help them with preparation and representation of their application for work permit, to help them assess their chances for future eligibility for permanent residence and to guarantee that they have a full picture of their rights and duties once in Canada on a temporary permit. Using an authorized representative must be optional and full disclosure must be made in a retainer agreement.

IV. CURRENT ISSUES SURROUNDING THE TFWP

1) SERVICE PROVIDERS

1.1 CIC overseas

1.1.1. Qualifications of TFW – inconsistent interpretation of dual intent

Around the world, visa offices apply different criteria and interpret the regulations differently. Most refusals are based on lack of ties to the country of residence, regardless of qualifications of the TFW. There are no clear guidelines about what would satisfy the visa officer.

English/French language skills are assessed without clear standards that could be applied to avoid unnecessary refusals. IELTS testing is not mandatory; therefore the visa officer makes his assessment on a strictly subjective basis.

1.2 Canada Border Services Agency

1.2.1 Role of CSBA Agents at the Point of Entry

The Border Services Officers at Canadian airports are the last enforcement opportunity. By ensuring that the employer is indeed expecting the TFW through a phone call, they could eliminate potential “release on arrival” cases. If the phone call becomes mandatory, those who are attempting to abuse the system would be discouraged to do so.

1.3 Recruiters

1.3.1 Difficult to monitor and enforce activities of Recruiters

The TFWP has created a booming industry of licensed and unlicensed recruitment agencies both in Canada and overseas. Since immigration involves the laws of at least two countries, this adds complexity to any regulatory solution.

1.3.2 Ethical Recruiters offer a valuable service to Ontario Employers and TFW's

It is imperative that we do not underestimate the role that legitimate recruiters offer to the entire process.

On one side, a Recruiter performs invaluable services to Ontario employers who are not able to meet their needs through local work force through the following services:

- Locating available workers abroad through agents
- Assessing TFW's qualifications for the position offered
- Verifying TFW's references
- Preparing a resume to be presented to the Canadian employer
- Arranging interviews with prospective employers

- Negotiating the employment contract

On the other side, a recruiter either directly or through an agent assists the TFW with the following:

- Negotiating the employment contract
- Assists with gathering of required documents
- Helps with obtaining certified copies of originals
- Provides information about life in Canada, rights and obligations of the TFW under the TFWP and the contract
- Helps with flight arrangements
- Assists the TFW after arrival in Canada to settle and to obtain required documentation
- A good recruiter works with an authorized representative to ensure compliance with Canadian laws and regulations and to increase client's chances to succeed

1.3.3 No consistent standards for recruiters of FW

Currently recruiter agencies do not have to comply with standard requirements.

This has resulted in the following problems:

- Recruiters charge unreasonable fees to the TFW
- Recruiters present unsuspecting TFW with fake employment offers with fake LMO's; when the TFW arrives, there is no job and the TFW is either deported at a Point of Entry or is forced to work under the table until a new work permit is issued 4-5 months later.
- Recruiters do not charge Canadian employers for services performed on their behalf and transfer the costs to the TFW
- Recruiters do not inform Ontario employers of their responsibilities and duties
- Recruiters do not provide follow-up services after arrival and have no responsibility for the welfare of the TFW they bring to Canada.

Those provinces that regulate or plan to regulate recruiter agencies fail to recognize the specifics of the TFWP and are imposing the same standards on recruiters of foreign workers as on the recruiters of Canadian employees.

1.4 Service Canada

1.4.1 Long processing times at the HRSDC level

LMO's are currently taking 6 to 8 weeks to process, regardless whether the TFW is still abroad or already in Canada.

1.4.2 Lack of courteous and service-oriented behaviour by SC officers

Service Canada officers often display unfriendly attitude towards employers. The officers refuse to deal with appointed representatives despite having authorization from the employer and ask inappropriate questions. There is no transparency and accountability on the part of Service Canada.

1.4.3 No consideration for TFW's already in Canada who need to change employers

quickly

TFW's already in Canada lose 3 to 6 months on average when changing employers and are often left without a place to live and income to survive. This only encourages them to work illegally – it's a matter of survival, not lack of respect for our rules. Furthermore, this forces the employers to break the law by employing the TFW illegally. The advertising is still required by the employer in such a case, further extending the wait for a new work permit.

1.4.4 Responsibilities of Service Canada vs. Citizenship and Immigration Canada

Service Canada is supposed to assess the Canadian employer and issue an LMO. Yet the office does not assess the financial eligibility of the employer – the overseas visa office does this instead. It is not logical that the employer could be found ineligible to hire a TFW months after he has been approved by SC and the TFW is a week or two from arriving to Canada.

1.4.5 Lack of monitoring and enforcement

There is no database of TFW's and employers that would enable both SC and CIC to monitor the program and enforce compliance of both the employer and the TFW.

1.5 Authorized Representatives

1.5.1 Enforcement of federal and provincial regulations

There are still some visa offices that deal with unauthorized representatives (Hong Kong, for example)

1.5.2 Discrimination against foreign workers using authorized representatives

Some visa offices automatically assume that if a foreign worker uses an authorized representative, they have paid for the placement in Canada (Abu Dhabi, Singapore, for example).

2) Temporary Foreign Workers

2.1 APPLICANTS ABROAD

2.1.1 Not sufficient information about Canadian immigration rules

TFW's abroad have limited knowledge of Canadian immigration rules and the system under which they are applying for the work permit. More often than not, they are under the impression that by getting the work permit, they would become permanent residents after some time.

2.1.2 Abuse of the TFWP by the TFW's

It is not uncommon for TFW's to use a recruiter and a genuine employer to obtain entry into Canada, then proceed to go to their relatives and friends. In other cases, TFW's are aware that they do not have a legitimate employer in Canada but are willing to pay for the opportunity to come and find a new employer, hence the "released upon arrival" cases.

2.2 TFW's IN CANADA

2.2.1 Lack of information

Even after arrival in Canada, the TFW's have limited access to information about their rights and duties. If the employer is not willing to abide with the contract and the rules of the TFWP, they either remain in the job for lack of a better option or they try to find a new employer. The current process is prohibitive in the amount of work and time needed to accomplish the latter task.

2.2.2 Lack of impartial support services

The barriers to accessing support services by TFW's suffering abuse are too high. Even if the TFW realizes that she is breaking the rules and contacts someone for advice and/or help, she is left with only one option: report the employer and be deported, because she is the one who violated the rules.

3) Canadian Employers

3.1 Non-compliance of Employers to follow Provincial Labour Standards

Some employers are either not educated or choose not to fulfill their obligations towards the caregiver. This has resulted in the following issues:

- Employers hire a TFW under the table on a trial basis without first completing the paperwork
- Employers fail to deduct taxes, CPP, IE or fail to remit CRA deductions
- Employers refuse to issue T4 slips and/or Record of Employment
- Employers insist on long working hours without proper compensation
- Employers do not allow the TFW appropriate time off
- Employers threaten the TFW with deportation or by reporting her to the immigration authorities, if she does not comply with their demands

3.2 Lack of Enforcement for non-complying Employers

There is no monitoring or an effective enforcement tool in place to deal with non-complying employers.

V. PROPOSED SOLUTIONS

MAIN PRINCIPLES

- Establish clear rules for all involved parties
- Define the job description of a recruiter
- Establish a regulatory body for recruiters of TFW's
- Establish a Registry to monitor the program and enable enforcement

OVERVIEW OF SUGGESTED SOLUTIONS

We suggest that the following be implemented in Ontario

1. **Establishment of clear rules for all involved parties**
2. **Establishment of an Ontario FTWP Registry**
3. **Regulation of Recruiters**

Clear rules for all parties involved in the TFWP

Employers

- Are responsible for the recruitment process, either directly or through a recruiter
- Must pay for the recruitment services
- Must ensure that the recruiter is a member of regulatory body
- Must register with the Registry if they want to hire a TFW
- Must comply with the terms and conditions of the employment contract
- Risk penalty for non-compliance: no more TFW's

Recruiters

- Must be regulated and comply with their regulator in their activities
- Must charge the employers for their services
- May charge the TFW for services not defined as “recruitment”, provided that the services are offered with a clear note that it is not mandatory to accept them by the TFW
- May not provide immigration services unless they are authorized representatives
- May operate in other provinces, either by virtue of their Ontario license or by obtaining a formal license (no bond) from other provinces
- Must ensure that the employer complies with the terms and conditions of the TFWP

Ontario Government

- Define “recruitment-related services”
- Establish a regulatory body for recruiters
- Establish a TFWP Registry

Temporary Foreign Workers

- Should understand the difference between a licensed and an unlicensed recruiter, and an authorized vs. an unauthorized representative
- Should understand that any services for which he is asked to pay are strictly on a voluntary basis
- Have the right to retain the services of an authorized representative should they wish to do so and have the duty to pay for these professional services
- Unless they retain a licensed recruiter, they are responsible for any and all paperwork related to the placement and employment, as well as everything that is required from them after arrival in Canada. Any responsibilities assigned to the Employer must be clearly specified in the employment contract.
- Unless they retain an authorized representative, they are responsible for their application for a work permit
- Must understand the rules (immigration, labour standards, etc.) and accept consequences of their violation. Such consequences must be clearly stated by CIC, SC and/or Ontario government (for example the inability to obtain a new work permit should the TFW leave the

employer without just cause and a duty to leave Canada within a prescribed period).

All of the above applying to a TFW is very difficult to achieve without the licensed recruiters and authorized representatives. As long as there is an option for recruiters to operate outside of the regulatory regime, there will be workers who, knowingly or not, will be found to have violated rules. CIC, SC, Ontario Ministry of Labour, CSIC, and all other agencies should attempt to increase awareness around the world, particularly in countries where fraud is widespread and the system is abused not only by recruiters but also by the TFW's.

Establishment of an Ontario TFW Registry

Purpose of the Registry

The Registry would keep records of all employers wishing to hire TFW's and monitor compliance with the program by both Employers and FW in Ontario.

Functions of the TFWP Registry

The Registry would be a central resource for the entire TFWP. It would have the following functions:

- Collect all the documents required to verify the Employer's eligibility to hire a TFW
- Record all jobs offered and post them on a website with clear explanation about how to apply for the position, whether the employer has hired a recruiter or not. No employment offer should be approved without being listed on the Registry website.
- Record every issued LMO
- Record arrival of each TFW
- Record termination of employment – date and reason
- Record complaints and compliance issues for employers and TFW's
- Dissemination of information to the TFW's through its website, workshops, seminars, etc.
- Advocacy for the TFW, job exchange forum, intervention, resources, mediation, benefit insurance, etc.
- Source of real-time information for Service Canada, CIC and CBSA

We would be happy to provide additional input on the Registry establishment and functions.

Structure of the TFWP Registry

The Registry does not have to be a government agency – it can be contracted out to a private company. The Registry would have to report to CIC and SC every year and would have to be able to keep track of all employers and TFW's in the country, including those who are still abroad. Random quality control checks could be done throughout the year to ensure that the integrity of the program is maintained. It is important to note that the Registry would not be a Regulator – it would be solely acting as a Facilitator.

It is important to set up the Registry as a combined effort of three government agencies: SC, CIC and CBSA. Only cooperating and sharing the information available through the Registry could achieve the full benefits.

Registration Process

Every employer that wants to hire a TFW must register and pay for the registration.

With the registration, the following documents would be requested:

- Previous LMO or Employer ID #
- Proof of ability to financially support a TFW
- Business registration and/or incorporation proof
- Employment offer (without TFW name) stating salary, benefits, overtime, working hours, vacation, holidays, etc.
- LMO Application
- Proof of alternative advertisement – the Registry posting would be a part of the advertising efforts
- Appointment of a third party/recruiter

Once the registration is complete, the employer would receive a registration number and the application for LMO would be forwarded to Service Canada. SC would issue an LMO for each position valid for 6 months. A digitalized code or a bar code unique to each LMO could be included for verification and quality control purposes.

An approved job posting would be published on the Registry website with information about how to contact the employer or a recruiter on file.

A registered employer with a valid LMO would be able to hire any TFW, whether in Canada or still abroad. Once the employer finds a TFW, he would submit a copy of a signed employment contract and particulars of the TFW to the Registry.

Within the first 30 days of arrival into Canada, the TFW would have to report to the Registry her date of arrival, mailing address and contact information. This information would have to be updated whenever it changes, either directly by the TFW or by an authorized representative. Upon registration, the Registry would mail to the TFW a brochure with information about Labour Standards, rights and obligations of the TFW in Ontario, relevant agencies and contact information, including websites. Not reporting would be a reason for refusal to issue another work permit by CIC.

If the employment is terminated for whatever reason, the employer would submit a copy of the Termination Letter, Record of Employment and a final T4 slip to the Registry. A penalty for non-compliance would be financial and include prohibition from hiring another TFW under the program. The amount of the penalty would need to cover the cost of recovering missing documents and dealing with Service Canada and Canada Revenue Agency to help the TFW with obtaining necessary documentation.

If the TFW leaves her Employer within the first 30 days, the Employer must file a report with the Registry and be subjected to a mandatory interview regarding the circumstances of her employment termination.

If the TFW leaves the employer within the first 6 months of the employment, the Employer would have the right to report the worker to the Registry.

If the Employer terminates the TFW in the first 30 days of arrival, he must state reasons for termination (lack of work ethics, absenteeism, misrepresented qualifications, etc.) A mandatory interview with the employer and the worker by the Registry officer would be conducted.

Registration Fees for the Employer

As the process of recruiting and hiring a TFW is both more expensive and more complicated than hiring someone from “off the street”, it is assumed that the Canadian employer is only doing so because they cannot find a suitable person in Canada. The registration fee would cover the cost of

the Registry and would be considered as part of the recruitment costs. It is unreasonable to expect that the Ontario government would finance the establishment and operation of the Registry.

Rights and Duties of Employers

- The Employer must pay for the recruitment costs
- The Employer must have a signed contract with the Recruiter, clearly stating the scope of services required and the price for the services
- The Employer has the right to report a TFW who is in breach of the employment contract to the Registry without being penalized
- The Employer has a duty to keep records of paid wages, hours worked and present the records upon a request by the Registry
- Non-compliance with the employment contract will result in inability to hire a TFW in the future

Regulation of Recruiters

Provincial regulation

There is no doubt that recruiters must be regulated, as are other professionals. Professional regulation is a provincial responsibility.

Criteria for regulations:

- Canadian citizen or Permanent Resident
- May be a member of a LSUP or CSIC, but not mandatory
- Clean criminal record
- Entry exam covering issues as Labour Standards, Ethical Standards, Service Canada rules, etc.
- Physical address in Ontario
- Payment of membership fees

A regulatory body would have to be established to ensure the integrity of the process and enforcement of the rules. A penalty for violating the rules has to be set to discourage unethical recruitment practices.

Duties and responsibilities of Recruiters

- Must charge employer for recruitment and/or paperwork related to the Registry and LMO
- Must keep records of retainers and fees, invoices and receipts for payments by employers
- Must keep records of employers and TFW (contact information, status of employment) to be able to report at any time to the Registry
- May work with foreign agents – full responsibility for the agent will lie with the Recruiter
- Must present the TFW with options to proceed on his/her own or retain a professional to help with application for a WP
- May not charge the TFW for placement and LMO
- May not prepare the WP application unless he is an authorized representative in accordance to IRPA
- If an authorized representative, must have a separate agreement with the Employer and the TFW, addressing dual representation and conflict of interest issues, both agreements stating clearly the scope of services provided to both parties

Rights of recruiters

- A recruiter that becomes a member of a provincial regulatory body should be able to operate in other provinces, either by default or by obtaining a formal license that would be issued based on his membership in provincial regulatory body
- A recruiter has the duty to charge the employer for services rendered
- An employer may not recruit a TFW through a recruiter, unless he pays for the services. A retainer agreement between the Recruiter and the Employer would be a part of an application to the Registry if a Recruiter is used.
- An employer may recruit directly, without involvement of a Recruiter. If that is the case, it must be clearly stated in the application to the Registry.

Payment of fees by Employers and Temporary Foreign Workers

Once the rules for charging the fees are established, it could be mandated to the employers to refund the costs incurred by the foreign worker for immigration-related paperwork as a form of a retention bonus. For each month of employment with the original employer, the worker would receive additional, non-taxable payment equaling 1/12 of the costs upon presentation of an invoice.

We strongly recommend that foreign workers are allowed to retain and pay for the services of an authorized representative to advance their interests, help them navigate the system and avoid mistakes that are commonly the cause of a refusal, whether it be the work permit application or consequent application for permanent residence.

Industry stakeholders could establish a recommended price range for individual services and publish them on the Registry website. A formal retainer agreement could be made a mandatory requirement for an application for work permit. Such an agreement would state the scope of the services, price and clear indication that the services were retained voluntarily, without undue influence from the recruiter.

Travel & Relocation Expenses

Managerial, Professional & Skilled Workers (NOC 0/A/B)

- Employers of Skilled Workers often wish to assist their new employees in logistical costs associated with relocating to Canada even though they are not obligated to.
- These costs could include airfare, commercial moving expenses, initial accommodations in Canada, etc.
- Employers can help in many ways such as paying directly, providing a relocation allowance to cover costs, or paying these fees up front and allowing the employee to pay them back through source deductions over a longer period of time.
- Employers choosing to deduct these expenses at the source should continue to be allowed to do so where agreed upon in the employment contract.
- Every deduction of advanced funds must be stated in the employment contract.

Lower Skilled Occupations (NOC C/D)

- Currently Employers are required to pay transportation expenses, and are not allowed to deduct these expenses from their employee's wages.
- This is in the interest of worker protection and should continue unchanged.