



Conseil canadien pour les réfugiés  
Canadian Council for Refugees

# Temporary Foreign Worker Program

**A submission by the Canadian  
Council for Refugees to the  
Standing Committee on Human  
Resources, Skills and Social  
Development and the Status of  
Persons with Disabilities**

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## Introduction

The Canadian Council for Refugees (CCR) is a national non-profit umbrella organization committed to the rights and protection of refugees and other vulnerable migrants in Canada and around the world and to the settlement of immigrants and refugees in Canada. The membership is made up of approximately 180 organizations involved in newcomer settlement and refugee and migrant rights, as well as refugee sponsorship. The Council serves the networking, information-exchange and advocacy needs of its membership.

The CCR welcomed the announcement that the federal government would be conducting a review of the Temporary Foreign Worker Program (TFWP), as it presents an opportunity to address concerns with the program, particularly with regards to the human rights of the migrant workers participating in this program.

Abuse and exploitation of migrant workers in Canada as participants in the TFWP is well-documented, and represents the most urgent concern for revisions to the Program. Over the years the CCR has developed several recommendations to improve the integrity of the program, some key elements of which will be outlined below. However, overall, the CCR believes that Canada must move away from the increasing reliance on temporary labour migration programs that are fraught with abuse, and return to using permanent immigration as a strategy for meeting labour market demands, and nation-building.

While the Committee's review focuses on the Temporary Foreign Worker Program, the CCR would like to be clear that our concerns apply also to the Seasonal Agricultural Worker Program which has seen similar cases of abuse of workers.

## Priorities for change within the Temporary Foreign Worker Program

### Open Work Permits

The vulnerability to abuse that migrant workers suffer from is built into the TFWP. Closed work permits that tie workers to the individual employer who brought them to Canada make them highly vulnerable to abuse. If their employer exploits them, their options are to remain with the employer or leave Canada. If they complain, their employer can fire them, resulting in the loss of their right to remain in Canada. Workers therefore often feel forced to endure abuse. Abuse and exploitation of migrant workers have been well-documented, with many cases amounting to human trafficking.

Closed work permits for Temporary Foreign Workers violate *the International Covenant on Economic, Social and Cultural Rights*, to which Canada is a signatory. Article 6 guarantees the right to freely choose or accept work, and to full and productive employment in conditions which safeguard workers' fundamental political and economic freedoms.

### Recommendation

TFWs should be issued open work permits. This would reduce their vulnerability and create an incentive for all employers to respect the human and labour rights of workers.

### Access to services

Many CCR members are newcomer settlement agencies and community organizations that offer settlement programming to newcomers. In our recent study *Migrant Workers: Precarious and unsupported*<sup>1</sup>, we document how frontline service providers are aware of the needs of migrant workers but unable to adequately serve them because of lack of funding. Federal funding for settlement services for newcomers excludes migrant workers other than caregivers. Some of the provinces have stepped up to help fill the gap in service provision left by the federal government, however this often plays out unevenly across regions, and in some provinces is completely absent. The lack of funding to provide services to migrant workers only exacerbates their already extreme vulnerability.

#### Recommendation

The federal government should expand eligibility criteria for accessing settlement services to all migrant workers, including Temporary Foreign Workers and Seasonal Agricultural Workers.

### Family Reunification

The impacts of family separation on the mental health of migrant workers have been well-documented: stress, anxiety, and depression are some common symptoms. Temporary Foreign Workers in Canada are separated from their families four years or more in the case of caregivers who face long delays processing their applications for permanent residence. Canada benefits from the economic and social contributions of these workers, and should not in return require them to be separated from their loved ones.

#### Recommendation

The federal government should allow Temporary Foreign Workers to be accompanied by their spouses and children and issue them work permits.

### Enforcement of Rules and Regulations

The CCR has long been calling for meaningful enforcement of the rules and regulations of the TFWP with the objective of protecting migrant workers from abuse. Until the 2014 overhaul, monitoring was virtually non-existent and when enforcement was carried out, it was often effected inequitably, with workers penalized for any non-compliance, even if it was forced on them by the employer or a recruiter, while employers appeared to be treated very leniently. For example, a worker who was transported by their employer or recruiter to work for an establishment for which they did not have a work permit would be penalized for violating the rule limiting the worker to work for a single employer, while the employer or recruiter who had coerced the worker into violating the rules would not be penalized.

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<sup>1</sup> <http://ccrweb.ca/en/migrant-workers-services-march-2016>

In 2014 the federal government announced an overhaul of the TFWP, including “stronger enforcement and tougher penalties”, in response to concerns over abuse of the program. The government pledged that inspections would be massively increased so that one in four employers using temporary foreign workers would be inspected each year. According to Immigration, Refugees and Citizenship Canada (IRCC) statistics, there were 177,704 TFW permit holder in Canada at the end of 2014.<sup>2</sup> However, as presented before the committee on May 11 2016, between April 2014 and December 2015 only 340 inspections of employers were carried out. Although the number of TFW employers is not indicated in these statistics, there is clearly a large gap between the promise of one in four employers being monitored and the reality. Furthermore, despite the widely documented abuse of migrant workers participating in the TFWP, we see evidence of only four Labour Market Impact Assessments (LMIA) revoked in 2014 on the government website.<sup>3</sup>

The inspections plan outlined in the 2014 overhaul did not explain how inspections would address issues of migrant worker precariousness resulting from closed work permits. It was announced that CBSA would be involved in investigating suspected cases of offences by employers under IRPA. This is of serious concern, as the CBSA has a mandate to deport people without legal status. If LMIA and work permits are suspended or revoked in response to an employer’s violation of the regulations, workers find themselves without legal status in Canada through no fault of their own. There must be a mechanism put in place to protect the rights of workers who are left without a valid visa as a result of their employer’s infractions. It should be noted that if TFWs were granted open work permits, then the loss of their job due to their employer’s infraction would not result in their becoming undocumented and therefore vulnerable to deportation through no fault of their own.

Some provinces have taken steps to fill gaps left by the federal government, passing their own provincial legislation and actively enforcing it (rather than relying on complaint-based mechanisms which are largely ineffective in the case of migrant workers, who feel unable to complain). However, the TFWP is a federal program, and its integrity is a federal responsibility.

### **Recommendation**

The federal government should follow through on promises of stronger enforcement, and that enforcement should be aimed at protecting workers from abuse.

In cases of abuse or violations by the employer, the status of workers should be maintained during the period necessary to seize a tribunal of the matter and to await its resolution.

### **Legislation to address predatory recruitment**

There is a significant problem of migrant workers being charged (often exorbitant) fees by recruiters either in Canada or in their country of origin (sometimes both). In many documented cases, workers become vulnerable to human trafficking and other serious abuse due to the debts incurred when paying recruiters to work in

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<sup>2</sup> Facts and Figures 2014: Immigration Overview - Temporary Residents. *Temporary Foreign Worker Program Work Permit Holders by Gender*, available at [open.canada.ca](http://open.canada.ca).

<sup>3</sup> [http://www.esdc.gc.ca/en/foreign\\_workers/employers/ineligible\\_employers.page](http://www.esdc.gc.ca/en/foreign_workers/employers/ineligible_employers.page)

Canada. Recruiters often give false information to lure workers into paying high fees, for example promising access to permanent residence where there is none, or higher wages and better working conditions than those that are actually available. In some cases, workers pay recruiters to be placed in jobs, only to discover on arrival in Canada that these jobs don't exist.

While the TFWP regulations do not permit workers to be charged recruitment fees, the rule is not enforced. Some provinces have taken the initiative to introduce legislation prohibiting this practice, and requiring recruiters to register with the province. These measures have had a positive impact for migrant workers. However, the provinces receiving the largest numbers of migrant workers have not adopted such legislation.

Moreover, provincial legislation is not effective for addressing the problem of recruitment fees in the source country, which is often even more egregious. Workers go into debt to pay fees of up to \$20,000. Although this represents a serious challenge to policy-makers, the problem must be addressed for the program to have integrity.

### **Recommendation**

The federal government must take responsibility for the integrity of the TFWP by legislating and enforcing to address the problem of predatory recruiters who take advantage of migrant workers both in Canada and in the country of origin.

### **Access to Permanent Residence**

The root of the precariousness and vulnerability experienced by migrant workers in Canada is their precarious status in Canada. While opening TFW work permits to allow labour mobility will greatly improve this situation, access to permanent residence is the only measure that will truly eliminate the vulnerability that is built into the TFWP and put low-skilled migrant workers on an equal footing with the rest of Canadian society.

Addressing long-term labour needs via short-term “disposable” labour creates a two-tiered society, with a growing population of workers who have access to fewer rights than others, and are not permitted to integrate and contribute to Canadian society. It is discriminatory that workers deemed high-skilled are guaranteed a pathway to permanent residence via the International Mobility Program and the Canadian (and Quebec) Experience Class, while low-skilled workers who are just as essential to meet labour needs are not given this opportunity to become members of Canadian society.

Human rights organizations such as the CCR are not alone in supporting access to permanent residence for migrant workers. Indeed, employer groups such as the Canadian Federation of Independent Business, and employers such as Maple Leaf Foods have publicly promoted this position.<sup>4</sup>

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<sup>4</sup> <http://www.cfib-fcei.ca/cfib-documents/rr3341.pdf>

**Recommendation**

The federal government should guarantee the right to all admitted as migrant workers, whatever the category, to apply for permanent residence at the same time as they apply for the work permit. This would move us away from treating newcomers as disposable, as we have been doing by using precarious, temporary labour to fill long-term positions.

**Four-in-four-out Rule**

In 2011 a rule was introduced that limits TFWs to four years participating in the program, followed by four years outside Canada before they may participate again. This change was intended to reinforce the temporary nature of the program. However, much of the labour demand is not temporary, and the TFWP is no longer achieving its intended goal of filling acute *short-term* labour demands in certain sectors. The “four in, four out” rule missed its target by reinforcing the temporariness of the workers, rather than of the positions.

**Recommendation**

The four-in-four-out rule should be eliminated.

**Provincial Nominee Programs**

Many provinces address low-skilled labour shortages by making TFWs eligible for their Provincial Nominee Programs. Federal government caps limit this access, and language requirements imposed on candidates by the federal government make it difficult for migrant workers – who have no access to federally funded language instruction – to meet the requirements.

**Recommendation**

The federal government should increase caps on Provincial Nominee Programs, and reduce or eliminate language requirements for nominees.

**Long delays and caps for caregivers**

Caregivers have traditionally had a pathway to permanent residence, however recent changes have seen a cap imposed on the number of caregiver applications permitted each year. This change has effectively removed the guaranteed pathway to permanent residency, for no clear reason, although these workers are responding to labour shortages in Canada. The seemingly arbitrary caps have created a deep anxiety in the caregiver community.

In addition, caregivers have been facing long delays for their permanent residence applications to be processed. The government website currently shows 49 months as the processing time for live-in caregivers. These delays result in prolonged family separation with documented cases of up to a decade.

#### **Recommendation**

The federal government should remove caps on permanent residence applications from caregivers who have fulfilled the requirements, and should allocate increased resources for more timely processing.

### **Long-term Immigration Strategy**

As long as Canada continues to manage temporary labour migration programs such as the Temporary Foreign Worker Program, Caregiver Program, and Seasonal Agricultural Worker Program, it must be understood that the temporary and precarious status of the workers makes them vulnerable to abuse. For the programs to have integrity, the protection of workers' rights must be prioritized in the ways described above.

More broadly, the CCR believes that Canada must return to a strategy of permanent immigration to meet labour needs and to build a stronger society. Many of the positions being filled by Temporary Foreign Workers are not temporary positions. Voices from the business community echo the sentiment that workers coming to Canada to fill low-skilled positions should be allowed to come permanently. Rather than investing so many resources in temporary programs that facilitate abuse and even trafficking of workers, Canada's economic immigration program should be expanded to include low-skilled workers, thus reflecting the broad needs of the Canadian labour market.

#### **Recommendation**

Canada's economic immigration program should be revised to include low-skilled workers.

### **Commitment to the Rights of Migrant Workers**

Canada has not ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, adopted by the UN General Assembly in 1990. The Convention sets a moral standard, and serves as a guide for the promotion of migrant rights. Many of the clauses uphold rights that have been frequently violated in Canada.

#### **Recommendation**

Canada must make a commitment to migrant worker rights by signing on to the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*.

