



Comments on proposed changes to the Temporary Foreign Workers Program
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The following are the Canadian Council for Refugees's comments on the proposed amendments to the *Immigration and Refugee Protection Regulations* regarding the Temporary Foreign Workers Program (TFWP), as announced in the *Canada Gazette*, Part I, on 10 October 2009.

General comments

The changes are presented as a response to “the unprecedented growth in TFWs, coupled with rising concerns for the fair treatment of TFWs”. The Canadian Council for Refugees has made public its concerns at the dramatic shift towards temporary migration in recent years. This shift represents an important policy change, but it has taken place largely without public debate. The CCR's comments on the proposed amendments are made in the context of concerns over the particular vulnerability of workers on temporary visas and the broad impacts on Canadian society of expanding the temporary migration program.

In recent years, the number of workers admitted to Canada on temporary visas has doubled. The increase in Temporary Foreign Workers has brought to public attention stories of abuse and difficult conditions faced by workers. For many years, Citizenship and Immigration Canada (CIC) has been urged by numerous groups, including the CCR, to address the vulnerable situation of Temporary Foreign Workers as a result of their status.

Their rights are not fully protected. In most cases, they don't have access to settlement services and cannot bring their family with them to Canada. Even if these workers spend significant time in Canada, they can't participate to their full potential in Canadian society.

Furthermore, large-scale temporary migration has significant social, political and human implications. It leads increasingly to a two-tier society, with a significant population, admitted only for their labour, who are separated from their families and have much fewer rights than others. Unequal societies are unhealthy societies.

The proposed changes, while intended to ameliorate some aspects of the Temporary Foreign Workers Program, fail to question the basic policy of relying on temporary migration to fill employers' demand for labour. We note that the Auditor General of Canada has recently criticized the government's failure to conduct an evaluation of the TFWP, among other programs. She concluded:

“not only are CIC and HRSDC unable to determine the extent to which these programs are meeting their objectives and achieving their expected outcomes, they are missing valuable information that could be used when making changes to programs or designing new programs.”¹

¹ 2009 Fall Report of the Auditor General of Canada, Chapter 2—Selecting Foreign Workers Under the Immigration Program, para. 2.38.

Four-year limit on stay of Temporary Foreign Workers

One of the main changes proposed by CIC is to introduce a maximum stay of four years for Temporary Foreign Workers, followed by a period of six years during which they will not be allowed to work in Canada.² This change is presented as a way to confirm the temporary nature of the Temporary Foreign Workers Program.

This solution is based on an assumption that the problem lies with the individual workers, who need to be prevented from continuing to work in Canada on temporary visas. The CCR considers that the problem lies rather in the labour market, which is relying on workers on temporary visas to fill long-term needs, and in the immigration program, which denies access to permanent residence to workers in the “lower” skill category.

While some Temporary Foreign Workers whose skills are deemed “high” may have access to permanent residence through the Canadian Experience Class, this option is not available to many Temporary Foreign Workers. We call into question the notion of grading skills as “higher” or “lower”, and of attaching lesser value to some people’s contributions to the country’s economy. We believe that all types of contributions make immigrants worthy of becoming permanent residents of Canada.

The approach adopted in the proposed regulations only reinforces the trend towards treating some non-citizen workers as “disposable”. We bring in foreign workers for their labour, use them for four years and then discard them, replacing them with other workers, potentially to fill the same jobs.

Rather than limiting the stay of the worker, the government should address the fact that in some cases the labour needs that are being filled by Temporary Foreign Workers are not temporary, but long-term or even permanent.

Enforcement of standards

Another change proposed by CIC is to restrict employers’ access to the TFWP for two years when the employer has provided previous Temporary Foreign Workers with wages, working conditions or occupation that are significantly different from those offered.³

The CCR supports the intention of addressing the abuses experienced by Temporary Foreign Workers, which are widespread as shown by many community groups, unions and media reports. However, it is not clear how effective the proposed change will be in achieving the goal, in the absence of a mechanism in place to monitor employers’ compliance with their promises. The Regulatory Impact Analysis Statement does not mention any concrete mechanism.

It seems to be implied that CIC will rely on workers denouncing the employers. However, workers with a vulnerable status will continue to be reluctant to denounce employers for fear of losing their job and being deported. In the case of “lower” skilled workers, many of whom are from the Global South, they regularly endure working conditions Canadians do not accept because they need to feed their families back home.

² Amendment to subsection 200(3) of the Regulations.

³ Amendment to subsection 200.1(1) of the Regulations.

The CCR recommends that the government put in place an effective monitoring mechanism to verify employment standards for Temporary Foreign Workers and pursue prosecutions of employers who break the law.

Ineligible employers: onus on foreign workers

As another part of efforts aimed at penalizing abusive employers, the proposed regulatory changes would have the list of ineligible employers published on the CIC website and place a responsibility on prospective foreign workers not to accept employment from an ineligible employer.⁴

It is unfair to expect foreign workers, some of whom do not speak English or French, to check CIC's website before accepting an offer of employment. There is also the possibility that employers banned for two years may apply to hire workers under a different name.

Since the goal is to protect workers from abuse, it is surprising that the regulations in this regard are placing new responsibilities on those who need to be protected, rather than on employers or the government.

Reducing the vulnerability of foreign workers

The CCR recommends that in issuing the visa CIC not restrict Temporary Foreign Workers to a specific employer, so that they can go to a different employer if they are abused by the one that brought them to Canada initially.

Role of recruiters

Many Temporary Foreign Workers come to Canada through the services of recruiters abroad that work for Canadian employers. These recruiters often charge workers fees, although this is illegal. The reimbursement of these fees is one of the reasons why Temporary Foreign Workers often hesitate to denounce abuse from employers. They need to continue working to pay back the fees.

The proposed regulatory changes do not address this reality.

Anti-oppression analysis

The Regulatory Impact Analysis Statement fails to examine the potential impact of the proposed regulations on traditionally disadvantaged groups.

Temporary Foreign Workers include a wide range of situations: from high-paid individuals selected for their particular skills to groups brought in for minimum wage jobs. It is disappointing that CIC does not analyse how the proposed regulatory changes would apply in the various contexts, and what the differential effects would be by gender, race and socio-economic status.

The CCR is concerned that the responsibilities placed on foreign workers to denounce and avoid unscrupulous employers will be particularly unhelpful for workers with lower levels of education and for those who are poor. They are less likely to feel secure enough to denounce an employer and less likely to have the language skills to make a complaint or negotiate the CIC website.

⁴ Amendment to subsection 183(1) of the Regulations.

The CCR also notes that among Temporary Foreign Workers women are disproportionately affected by denial of access to permanent residence. CIC statistics for 2007 show that, of TFWs for whom data was available, 69% of women would have been excluded for permanent residence through the Canadian Experience Class, compared to 51% overall. The data therefore shows that female Temporary Foreign Workers are more likely than their male counterparts to be denied the option of remaining in Canada on a permanent basis after contributing their labour through the Temporary Foreign Workers Program.

Conclusion

Traditionally, Canada has welcomed workers primarily as future citizens, who are invited to make a permanent home here and contribute not only their labour, but also in all other areas of life. Canada's policies have been markedly different from the European model of "guest-workers" – a model which has proven to be deeply flawed because of the long-term divisive social consequences, in addition to the human costs borne by the "guest-workers" and their families.

Unfortunately, Canada seems to be unwittingly moving in the direction of the guest-worker model, with the dramatic increase of temporary foreign workers, who in 2008 for the first time exceeded in number new permanent residents. The introduction of the 4-year limit on temporary work visas has a disturbing parallel in the German skilled worker program introduced in 2000, which invited skilled workers into the country for a maximum of 5 years, a clear indication that the labour was welcomed, but the people who laboured were not.

For some foreign workers in Canada, there is certainly the option of applying for permanent residence, for example as Skilled Workers or through the Canadian Experience Class. However, for a significant proportion of Temporary Foreign Workers, permanent residence is not an option: our immigration policies deem them necessary as temporary workers, but not worthy of becoming permanent residents. The proposed introduction of a 4-year limit only accentuates the two-tiered nature of the Temporary Foreign Workers Program. For the privileged, it can be a quick and convenient way of entering Canada on the way to permanent status. For the non-privileged, it is an opportunity for Canada to benefit from their labour for a few years before showing them the door.

Lack of permanent status places workers at a serious risk of abuse and exploitation. The CCR welcomes CIC's recognition of the need to address this potential for abuse. However, the proposed changes place little responsibility on the federal government to monitor employers. Instead the burden of denouncing and avoiding abusive employers appears to rest largely with the Temporary Foreign Workers themselves.

The CCR believes that granting permanent status, full access to services and respect of human rights is the only avenue to a strong and just society. Canada needs to refocus its immigration policy on permanent, not temporary, status and to provide more rights and better protections for temporary foreign workers, including opportunities for all to obtain permanent status.