Volume 4, Issue 3
March 2008

ImmQuest

"Qui bene interrogat bene docet" "He who questions well teaches well"

The Live-In Caregiver Program

Edward C. Corrigan, B.A., M.A., LL.B.

The Live-In Caregiver Program (LCP) is one of the more modest yet successful initiatives that Citizenship and Immigration Canada (CIC) has undertaken. It addresses an identified labour shortage in Canada in that there are not enough live-in caregivers to care for children, the elderly and injured individuals in this country. It provides employment opportunities for residents overseas who meet the requirements of the program. Individuals

Full story on page 2

INSIDE

Focus – Live-In Caregivers

THOMSON CARSWELL

Third Party Representation in LMOs and AEOs

Cobus Kriek

Possible Reasons Why the Existing Rules are not Followed

The causes in the current situation can only be understood if an audit is conducted, but in the absence of facts one can only make the following deductions and hypotheses about these causes:

If one reads the rules of HRSDC Foreign Workers in Ottawa (which is not publicly available to employers and representatives) as well as the statement in the application forms it sends a message that is ambiguous and contributes to the idea that ignoring third parties is acceptable.

The existing rules by HRSDC Foreign Worker Section and Service Canada Foreign Worker Offices are a mixed bag of hap-

hazard policies in the form of national directives, national guidelines, ad-hoc regional e-mails, regional directives, regional circulars, regional reference bulletins ("for internal use only") and guidelines (many not numbered and dated). It is confusing and difficult to keep track of this type of "pea soup" approach to policy and it is not contributing to procedural fairness. If one set of national rules are established it would be easier to inform the industry of changes in the rules. At the moment one learns about policy once an application is denied or when there are problems with a request. It is a process of learning by trial-and-error.

HRSDC Foreign Worker Section in Ottawa does not have direct control over the actions of Service Canada Foreign Worker Section in the provinces as each of these sections has a different Deputy Minister.

In a dispute, the dispute mechanism does not even include HRSDC Foreign Worker Section, which is the original formulator of the relevant rules that might be at the essence of the dispute. The Office of Client Satisfaction prefers that regional issues are to be dealt with by Managers of the Foreign Worker Sections and the Provincial Deputy Heads of Service Canada. If there is a misunderstanding of the fundamental issues of administrative law by Foreign Worker Officers how can one expect the Provincial Deputy Heads of Service Canada to understand these concepts?

Service Canada in the provinces is not enforcing the existing rules of HRSDC Foreign Workers in Ottawa due to possible indifference from the Service Canada HQ or some provincial offices of Service Canada or an opinion that "local rules are the only rules" or Deputy Ministers that is not aware of the consequences of the current situation.

Foreign worker officers and managers are possibly not trained in fundamental issues of *Administrative Law*, such as rules of natural justice, *audi alterim partem*, bias, procedural fairness, etcetera. Therefore it is doubted whether there is a general grasp of the role of third parties and their contribution to the principles of procedural fairness and the rights of employers to use third party representatives.

Service Canada Foreign Worker Offices are allowed to formulate ad hoc policies in the provinces of which the HRSDC Foreign Worker Section in Ottawa is not even aware. Take for example the recent decision in B.C. (Oct/Nov 07) not to provide name changes to positive LMOs without going through another painful 6 months processing period. This possibly contribute to the opinion that "local rules are the only rules" and possibly ignoring HRSDC Foreign Worker Section in Ottawa.

The *Immigration and Refugee Protection Act* Section 91, only requires that Authorized Representatives may appear in front of the Minister of CIC. It does not require Authorized Representatives to appear in front of the Minister of HRSDC and the Deputy Minister of Service Canada. Therefore any licensed or unlicensed recruiter, unauthorized management consultant or career councillor could make representations under *Immigration and Refugee Protection Regulation* 203 and 82 at a provincial office of Service Canada. It is suspected that Service Canada does receive applications from third parties (not authorized representatives) from this group, which is troublesome. Some of these recruiters force foreign workers to pay large amounts for finding them employment in Canada, which is illegal in some provinces (to receive payment to find a job for a foreigner). Some recruiters that are involved in these practices claim these payments to be for "career counselling or resume writing". Some of these recruiters also guide foreign workers during work permit applications. Some recruiters, acting in this manner could not obtain membership of CSIC and continue to work in the area of LMOs/AEOs and work permits as unregulated consultants with or without provincial licensure as recruiters or paralegals.

Some third party representatives have expressed concerns to speak up and confront officers and supervisors of Service Canada when they are being ignored, as they are concerned about receiving a fair and unbiased decision in another application in the future. Given the lack of transparency, lack of availability of rules, a confusing system of rules, officers ignoring rules from time to time, officers having very wide decision making powers and officers ignoring third party representatives, representatives have good reason to be careful. Confronting individual foreign worker officers that ignore third parties will not solve the problem, as it is believed that the solution lies in taking a strong national initiative.

Part III offers some suggestions for HRSDC Foreign Worker staff

Cobus (Jacobus) Kriek
Cobus Kriek is a Member in Good Standing of CSIC. He specialized in work permits for skilled workers and associated economic classes. His company is also involved in international recruitment of skilled workers. He can be reached at cobus@matrixvisa.com