

ImmQuest

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

Editors-in-chief: Cecil L. Rotenberg Q.C. and Mario D. Bellissimo; Associate Editor: Edward C. Corrigan

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Please send your questions to *ImmQuest* care of Mario D. Bellissimo at mdb@obr-immigration.com. If you have any questions you would like asked of either Citizenship and Immigration Canada or the Canada Border Services Agency send it along and we will ask on your behalf.

Third Party Representation in LMOS and AEOs, Part III

Cobus Kriek

Suggestions for the HRSDC Foreign Worker Section

The *Immigration and Refugee Protection Act* Section 91 Immigration and Refugee Protection Act should be expanded to include representation before HRSDC and Service Canada, not just CIC. Therefore “Authorized Representatives” as defined in the *Immigration and Refugee Protection Regulations* (Public Notaries in Quebec, Members of Provincial Bars and Members in Good Standing of CSIC) should be the only persons representing employers in LMO and AEO requests.

HRSDC Foreign Worker policy analysts and other senior policy staff should read authoritative books about Administrative Law (see the bibliography which could serve as a reading list) and attend seminars on Administrative Law. Specifically HRSDC and Service Canada Officers should also be trained in concepts of

administrative law such as procedural fairness, rules of natural justice, etc.

HRSDC Foreign Worker Sections should write clear and sensible policy on third party representation in line with jurisprudence and withdraw outdated policy. HRSDC should remove confusing statements and rights or claimed rights of calling employers direct from applications forms because it confuses foreign worker officers.

HRSDC Foreign Worker Section should knock on the door of CIC and ask for some guidance as CIC wrote a chapter in the Immigration Manual on third party representation, called Chapter IP 9.

The policy of HRSDC Foreign Worker Section should be the only rules applicable and enforced throughout the different Service Canada Foreign Worker Offices in the provinces. There are not different methods in which passports are issued or how Employment Insurance is provided by Service Canada across the country. Similarly, *Immigration and Refugee Protection Regulation 203 and 82* should be interpreted and implemented in the same manner across the country. The notion that the labour markets in different provinces are so different that *Immigration and Refugee Protection Regulation 203 and 82* should be interpreted and applied differently is nonsensical. If one reads *Chapter PP1* (dealing with refugees) of the *Immigration Manual*, the policy states in *paragraph 5.1* the following: "CIC and the CBSA have developed mandatory procedures... at all airports, land borders, and inland offices to ensure national consistency" and in *paragraph 2.2* it indicate one of the objectives: "to deal consistently and fairly with people. . . ." Once a single national policy about the interpretation and implementation of *Regulation 203 and 82*, is enforced throughout the country, we would be one step closer to resolving the problems such as ignoring 3rd party representatives.

Existing resources should be used wisely and at the same time more resources should be allocated to HRSDC and Service Canada Foreign Worker offices for policy development, training and specifically when employing more officers. Some existing policies and decisions about organizational development are possibly counter-productive and waste scarce resources:

- By refusing to change names attached to positive LMOs and forcing new applications to be made waste the time of officers; providing LMOs for 1 year for occupations under pressure (such as bricklayers in the GTA without any reasons)

and thereby forcing applications for extensions; or providing LMO extensions for 6 months in Alberta for occupations such as electricians, are contributing to a bigger work load, increasing waiting times and artificially increasing the workload and decreasing the productivity for each officer.

- A lack of knowledge (rules) what is required in submissions result in questions and instructions from officers to employers and third parties to provide the required information to make a decision. Once again this wastes time as well and contributing to a lower productivity.
- The use of scarce resources in Temporary Foreign Worker Units (TFWU) by CIC to give advance pre-approvals for LMO exemptions and to scan all incoming applications for exemptions could be utilized more effectively by having these officers at the TFWUs provide LMOs and AEOs.

It is doubted whether there are a sufficient number of LMO exemptions that could possibly cause a bottleneck at Service Canada Foreign Worker Officers in Alberta and BC. Therefore it is suggested that Service Canada and CIC (in terms of the TFWUs) ensure that existing funds are used in the most productive manner. This will provide the moral high ground to request more funds from the Treasury Board. It would also have the blessing of the Auditor General, representing us, the taxpayers.

By not providing reasons for decisions (not just conclusions), by having hidden rules, having rules that are not following the intent of the law maker, being unpredictable, having policies that discriminate against micro employers or the self employed, having national rules that are ignored regionally and by sporadically ignoring third party representatives, the LMO and AEO process is not consistently fair and just. Is this Canada?

Cobus (Jacobus) Kriek

Cobus Kriek is a Member in Good Standing of CSIC. He specializes 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

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