



Mr. Jacobus Kriek
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AOUT 08 2011
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Dear Mr. Kriek:

On behalf of the Honourable Diane Finley, I am pleased to respond to your recent letter, expressing concern regarding Human Resources and Skills Development Canada (HRSDC)/Service Canada's implementation of the amended section 91 of the *Immigration and Refugee Protection Act* (IRPA).

Effective August 2, 2011, employers who use the services of a paid third party representative to help them complete an application for a labour market opinion (LMO) or an arranged employment opinion (AEO) must demonstrate that their representatives are eligible to provide services under section 91 of the IRPA by submitting an Annex to the Appointment of Representative Form. The Annex is available through the following Temporary Foreign Worker Program's (TFWP) Web site, in Service Canada's electronic forms repository:
<http://www.servicecanada.gc.ca/cgi-bin/search/eforms/index.cgi?app=prfl&frm=emp5520&ln=eng>.

HRSDC/Service Canada takes its role in maintaining the integrity of the TFWP very seriously and requires that employers ensure that the third parties are authorized to represent them during the LMO/AEO application process. HRSDC/Service Canada will not process LMO/AEO applications in cases where the third party representative is not eligible to represent the employer as per section 91 of the IRPA. If employers wish to re-submit their applications, they must either use the services of an authorized representative, an unpaid representative, or apply without assistance.

In relation to your questions regarding subsection 203(3) of the *Immigration and Refugee Protection Regulations*, Service Canada officials assign a four-digit National Occupational Classification (NOC) code based on the description of job duties and the requirements listed on the application. NOCs for regulated occupations may require mandatory licensing/certification/registration and, in the event that the employer does not indicate such a requirement in the LMO application, Service Canada officials will inform the employer as a courtesy. This information assists Citizenship and Immigration Canada and the Canada Border Services Agency, who have the authority to assess the foreign national's ability to perform the job duties.

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HRSDC/Service Canada issues opinions on the potential labour market impact of the entry of a temporary foreign worker without any notification from occupational regulatory bodies. I have enclosed, for your information, the national operational directive relating to regulated occupations (Annex A).

I hope that this information proves helpful. Thank you for taking the time to write.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'AK', written in a cursive style.

Andrew Kenyon
Director General
Temporary Foreign Worker Program
Skills and Employment Branch

Enclosure: 1

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Section 3.5.9 – Provincial/territorial/federal certification, licensing, or registration requirements of the job and regulated occupations

It is the Employer's responsibility to provide proper territorial/federal certification, licensing, or registration required for the position they are seeking to fill.

- Advisors may consult with professional groups as part of their assessment process.
- It is left to the Service Canada staff's discretion to determine if this field is required to be filled in. (Depending on the National Occupational Classification (NOC) assigned to the job title).

Regulated Occupations

What are regulated Occupations?

- Regulated occupations are those jobs that "require a special license or certification before you can begin work. Most regulated occupations require that you have specialized education and experience before receiving your licence."

Consideration #1: Assessment of Qualifications

- Labour Market Opinions (LMO) are assessed on factors in *IRPR 203(3)* regardless of any regulatory requirements that are associated with the occupation/position.
- **The employer is responsible to ensure the selected applicant is/will be meeting the requirements of the position, including any licensing/certification requirements.**
- Citizenship and Immigration Canada (CIC) / Canada Border Services Agency (CBSA) assesses the foreign national's qualifications with reference to the characteristics of the job/position to be filled.

Consideration #2: Duration of Employment Period

- The duration of employment on the LMO is labour market-based. It cannot be set to accommodate time necessary to meet the regulatory requirements.
- The discretion that HRSDC/SC can exercise in regard to the LMO's duration of employment relates to the likely impact this job offer will have on the Canadian labour market.

Consideration #3: Flagging a Regulated Occupation to CIC

- As per box 48 of the LMO application (EMP 5239), the employer is asked to indicate if the occupation is subject to any regulatory requirements.
- Occupational regulatory requirements are to be noted in the "Notes to CIC" section of the LMO confirmation.

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Consideration #4: Regulatory Requirements not Identified by Employer in LMO Application

- Ensure that the employer has not forgotten to identify occupational regulatory requirements.
- Verify with LMI to ensure whether or not the occupation is subject to any regulatory requirements.
- When the employers seem to be unaware that the occupation is regulated, Service Canada staff will contact them to ensure that they are aware that the occupation is regulated, particularly if the requirement is mandatory in the province/territory (e.g. licensing requirements are always mandatory while certification requirements can be voluntary).

What do the expected changes mean for Foreign Worker Officers?

- LMO applications are assessed as usual as per factors in IRPR 203(3). **Regulated occupations will continue to be flagged to CIC through *Notes to CIC*.**
- **Assessments of LMO's are conducted without any notification from occupational regulatory bodies.**
- The duration of employment determined on the LMO is not varied on the basis of any occupational regulatory conditions.
- The employer is made aware of regulatory requirements if not identified in LMO application and directed to the regulatory body.

CIC/CBSA and the employer can directly seek information from the regulatory body.