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Immigration Law

The Office of the Minister of Human Resources and Skills Development
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**FOLLOW UP ON POLICY INQUIRY: IMPLIMENTATION OF IMMIGRATION AND
REFUGEE PROTECTION REGULATION 203**

Dear Ms Minsky

I made an inquiry to Mr. Phil Harwood on 5 July 2011; and followed up on that inquiry with you in an e-mail dated 21 July as well. Our telephonic discussion that same week has reference as well.

My office received the enclosed letter from Mr. Andrew Kenyon dated 12 July 2011, in which he referred to my letter dated 7 July 2011. It might be possible that Mr. Kenyon's letter is referring to my letter dated 5 July which is also the policy issue that is being addressed in this letter.

My inquiry is related to the administration and implementation of Immigration and Refugee Protection Regulation 203 (3). Pursuant to IRPR 203 (3), an officer of SC/HRSDC must assess 6 factors before a LMO decision is rendered:

Quote

(3) An opinion provided by the Department of Human Resources and Skills Development with respect to the matters referred to in paragraph (1)(b) shall be based on the following factors:

(a) whether the employment of the foreign national is likely to result in *direct job creation or job retention for Canadian citizens or permanent residents*;

(b) whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;

(c) whether the employment of the foreign national is likely to fill a *labour shortage*;

(d) whether the *wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards*;

(e) whether the employer has made, or has agreed to make, *reasonable efforts to hire or train Canadian citizens or permanent residents*; and

(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute.

Unquote

Pursuant to Immigration and Refugee Protection Regulation 203, Service Canada must issue their opinion based on the above 6 factors only. Whether the foreign national has the required experience, has the appropriate education, whether the foreign national is medically admissible or if the applicant has authority from a province to work in a regulated occupation are issues of compliance that are being enforced by CIC or the CBSA and therefore not the responsibility of Service Canada.

According to IRPR 203 (3) Service Canada and Human Resources and Skills Development Canada, for example does not have the authority to refuse an LMO or AEO if the foreign national does not present evidence to the Service Canada Foreign Worker Section that he or she has approval from a provincial regulator to work in a regulated occupation.

In the Foreign Worker office of Service Canada in AB and SK, Service Canada officers demand to receive approval from provincial regulators for some occupations, but not all occupations, before issuing a positive LMO. For example in SK and AB my office was instructed to provide approval from the relevant regulator for electricians before the LMO would be issued. However in the case of Alberta, approval from the Association of Professional Engineers and Geoscientist of Alberta is not required by Service Canada. Except for the fact that these demands are not necessary to answer any one of the 6 factors they need to assess, and due to inconstancy within Service Canada regarding these demands; the process is becoming confusing.

My submission is that these demands/requirements by Service Canada officers to have received

approvals from certain provincial regulators (not all regulated professions) before an LMO will be approved, are ultra vires. The CBSA and CIC will verify compliance with experience needed (as mentioned in the LMO), education levels needed (As mentioned in the LMO), and will verify if the foreign national has obtained approval from a provincial regulator according to provincial laws regulating certain occupations. If my understanding is flawed, please correct me.

The questions about IRRP 230 (3) and demands by officers as described above are as follows

1. In **which provinces** is the policy followed by HRSDC and Service Canada that approvals by provincial regulators (of regulated occupations) must be provided in occupations that are regulated before a positive labour market opinion is issued?
2. For **which occupations** is it required to provide approval from a regulator that a foreign national may work in a specific occupation to Service Canada before a positive LMO may be issued by Service Canada?
3. Where can this policy be found and studied by myself or my clients (Canadian Employers)? Any reference to **publicly available rules or regulations will be beneficial**. If possible please also provide copies of the rules or regulations where this requirement is defined. A source of authority would therefore clarify the whole issue

Thank you for your time

Respectfully yours



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Enclosures

Letter by Mr Kenyon dated 12 August 2011