

ImmQuest

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

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Skilled Foreign Workers: Is Service Canada And CIC Policy And Priorities Responsive To Canada's Labour Shortage?

Cobus (Jacobus) Kriek

The Canadian media is full of articles about severe labour shortages in several industries. One estimate is that we can experience a one million worker shortage by 2020. Another report indicates that 52% of all skilled tradesmen will retire in the next 15 years. Some industries have already approved a large number of foreign workers — just two companies have obtained positive Labour Market Opinions for nearly 2000 foreign workers in Alberta. In some provinces up to 25% of the professionals in certain industries are foreign workers. These statistics speak for themselves.

Unfortunately the policy and resource allocation of Service Canada Foreign Worker Section (previously known as HRSDC's Foreign Worker Section) and the priorities, resource allocation as well as the operational limitations at CIC are unable to meet the need reality. It can take anywhere from 5-8 months to get a foreign worker into Canada. I am not referring to low skilled workers (nannies, etc.) but medical doctors, tool and dye makers, vibratory bowl toolers, high speed forging machine setters, and millwrights, etc. These are highly skilled foreign workers that employers need in order to meet production requirements, customer orders, and compete in the international arena, all in effort to service the need of their clients.

Service Canada

Service Canada does not have a publicly available policy on how they form Labour Market Opinions (LMO's) and there are serious issues relating to a shortage of resources. See the following examples.

Definition of Reasonable Efforts. Service Canada provides the following guidelines on the Internet in the case of the low skilled pilot project: "Service Canada generally requires evidence of

recruitment efforts to find qualified Canadians before applying to hire foreign workers, particularly in NOC C and D occupations. Applicants will be asked to provide copies of advertisements in local and national newspapers, recognized INTERNET job banks, job-specific and professional publications, along with receipts to show how long the advertisements were published. The advertisements must clearly show the job duties, position requirements, wages and working conditions. In some situations, evidence of recruitment of Canadians through other means such as job fairs, co-operative education programs, and apprenticeships may be acceptable. Given the high levels of unemployment among Canadians in NOC C and D occupations, showing active recruitment of Canadians is critical for your application” (Source: <http://www.hrsdc.gc.ca/en/epb/lmd/fw/lasse.shtml#aar>). However, in a specific office of Service Canada in the Prairies, officers require that the employer show proof that these advertising efforts have gone on for at least eight weeks. This policy is not written or published but only “understood” after a refusal or a negative LMO is achieved. A request to Service Canada in Western Canada to provide the policy on length of advertisement was not answered — an officer refused to give an answer.

Therefore, the result is “we will not tell you how we make assessments at Service Canada and you can only find out when you submit an application”. Service Canada sometimes hides behind the excuse that the officer will look at all the factors and the region holistically before making a decision and that fixed rules on advertising periods cannot work. That is incorrect as fixed rules on minimum advertising periods are used by Service Canada when applications are denied.

One officer in this Service Canada office mentioned that the policy at that office requires LMO’s to be negative if there are workers on EI in the area of the employer (in the case of a LMO for a low skilled pilot project). That does not make a whole lot of sense as Canadians or permanent residents on EI might not choose to work in a specific occupation (low or high-skilled). That is actually why the Live-In Caregiver program came into existence. Rhetorically it can be asked — on what policy is this role of EI beneficiaries and advertising times based?

Role of Regulatory Bodies and Service Canada. The role of Service Canada Foreign Worker offices is to provide a labour market opinion based on Regulation (IRPR) 203(3)¹ that deter-

mines that HRSDC has to consider the six aspects before providing their labour market opinion.

It is not Service Canada’s role to become involved in regulating a regulated profession or give instructions regarding foreign workers in regulated professions. It is understood that their only role is to point out that a job is a regulated profession and to point out to CIC that an opinion is needed from the particular regulatory body.

Recently a request for an opinion of arranged employment was submitted to Service Canada in a Prairie Province of Service Canada. The officer declined the approval stating that the regulatory body did not provide approvals. This was a case of an electrician working in the manufacturing industry. The person dealing with foreign trained tradesman at the regulatory body has confirmed that an electrician working in manufacturing does not need a certificate for that province. This is explained in the Apprenticeship and Industry Training Act of this province.

One of the officers went further and mentioned that if a foreign trained electrician does not pass the examination within 90 days of arrival “the applicant must leave the country!” This policy is used even though the regulatory body in that province actually has an extended safety net whereby rewrites are possible after 90 days and additional training can be recommended from certain colleges. This demonstrates in my view that the regulation of professions is best done by the regulatory bodies, as they are the experts. It is uncertain why Service Canada is making decisions on behalf of regulatory bodies (stating the applicant must pass in 90 days) and CIC (the applicant has to leave the country)? If this policy is published, then the employers can prepare themselves without waiting for eight weeks (such as in Vancouver at present) for a decision to learn what policy is being implemented in that particular province.

Apparently Service Canada disseminated an internal e-mail about their policy and regulatory bodies. However an application under the *Access to Information Act*² will not be successful, as this is not an official document with a number that can be clearly described. The officer that mentioned this e-mail was possibly too concerned about the consequences for providing same. The fact that this guideline was provided within Service Canada shows that there is a need for policy.

¹ SOR/2002-227, s. 203(3).

² R.S.C. 1985, c. A-1.

In Part II:

- Next Dispute Policy & Rules of Natural Justice
- Hidden Data
- Sales Commissions
- Employment Agencies & Employer of Record
- Communication with Representatives
- Relative weight of each factor mentioned in Regulation 203
- Charter Rights

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NEXT ISSUE: CAIPS CAPERS

CAIPS. A recording system that for years has seemingly operated under the radar. Why? We want to take a hard look at CAIPS. Some of the questions we want to explore in the next issue of IMMQUEST include:

- When are CAIPS really recorded?
- Why are they deemed an accurate account of what transpires at an interview?
- Why do applicants not review and sign the notes?
- Are there better ways of recording the information in today's world of ever advancing technology?
- Should counsel raise these concerns on appeals?
- Should CAIPS be deemed credible and trustworthy evidence without the benefit of a *voir dire* akin to criminal proceedings?
- Why has this system persisted for so many years with little challenge?
- Do CAIPS properly serve the immigrant community?