

ImmQuest

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

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INVITATION TO OUR READERS

Do you have any suggestions for topics you would like to see featured in future issues of ImmQuest? Or, do you have a query for discussion? We welcome your comments, questions and concerns.

Please feel free to contact Mario D. Bellissimo at mdb@obr-immigration.com

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

Cobus (Jacobus) Kriek

Hidden Data. An officer at Service Canada was asked which occupations do not require an eight-week period of advertising? The Foreign Worker officer advised that Service Canada maintains an

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Cobus (Jacobus) Kriek

internal database of occupations in short supply for every town/district. For these occupations the eight-week period is not required. People in the industry are asking why this database is not available to practitioners.

Sales Commission May Not Be Included. Apparently Service Canada will not recognize commissions as part of the required "guaranteed income" figure. Regulation (IRPR) 203(3)¹ only describes wages "sufficient to attract Canadians." Why is this being interpreted to not include sales commissions in the calculation of income? Recently I had to deal with a major Canadian industry leader in the North American market. When I tried to explain the unwritten policy of Service Canada, the company executive mentioned that it is normal in Canada to have a base salary and commission for sales positions. Research on salary/wages for sales positions also indicates that figures include wages/base salary and commissions. Therefore Service Canada officials are making decisions based on an incorrect interpretation of the statistical wage data. Why?

Employment Agencies & Employer of Record. An employer of record is someone that "assigns work; provides day-to-day supervision; and pays the employee." Service Canada will apparently only provide positive labour market opinions to Employers of Record and not employment agencies (only if they provide the day-to-day supervision which does not always happen). It is assumed that this policy is based on the traditional model of employment agencies where employees are working for short periods at a time and then unemployed for periods in between. However, one of the new trends for highly skilled workers is that they are employed fulltime at an agency with all the traditional benefits such as pension, RRSP's, medical benefits, etc. These employees are working at least 37.5 hours per week and are considered full time workers. Many of the top employment agencies in North America have such employees and these employees can either be employed within the company (temporary agency) or outside the company. Service Canada's policy is therefore based

on an old human resources model - outsourcing is well known by modern day human resources in North America.

Communicate With Representatives. Service Canada officers speak to employers instead of representatives on occasion, as certain officials consider it merely a "courtesy" to communicate with a representative. Wrong! Actually in many cases employers do not want to communicate with Service Canada and engage intermediaries for this service and instruct service Canada of same. It is not a matter of courtesy but rather one of legal representation at the employer's request. If an officer cannot obtain all the answers from the intermediary in a reasonable time then direct communication with the employer might be acceptable. I suggest Service Canada review Chapter OP1 of the Foreign Worker Manual paragraph 5.23 and par 5.25 (pages 15-16) as it provides officers with clear guidelines on working with representatives.

Relative weight of each factor mentioned in Regulation 203(3). Reality has shown that officers in many cases largely focus only on recruitment efforts. It would be easier for people involved in the process and Service Canada officers if Service Canada simply published their policy. Service Canada has officers that are dedicated and professional people and I believe well intentioned. However without a clear and transparent policy they have a difficult task. Intermediaries will continue to struggle to be well prepared for Labour Market Opinion submissions. Negative decisions result in delays and limit the ability of companies to plan efficiently and to meet their manpower requirements in a timely fashion.

Rights. Section 7 of the *Canadian Charter of Rights and Freedoms*² dictates that the government respect the principles of justice. The *Canadian Bill of Rights*³ of 1985 indicates that no law may deprive a person of the principles of natural justice. In s. 2(e) of the *Canadian Bill of Rights* it is stated as follows: "no law of Canada shall be construed or applied so as to: (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations." Is Regulation 203(3) being implemented in contemplation of these principles?

Resources. If Service Canada cannot provide a labour market opinion within 2 weeks then some reengineering (that might include more resources) should be considered. The Service Canada Foreign Worker Section should not be seen as a cost

¹ R.S.C. 1985, App. II, No. 44, s. 7.

² R.S.C. 1985, App. III,

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Manual is an example of what could be done. An example includes the "spousal work permit." However, it will take at least 5 to 6 months and more realistically 7 to 8 months to get a foreign worker into Canada. At some offices, foreign workers have waited 3 to 4 weeks just for medical instructions from the date of submission. Add to that 8 weeks of advertising, 8 weeks at Service Canada and 14 weeks at the High Commission and the waiting period could well be 30 weeks.

In some cases foreign workers are not prepared to sell their property and terminate business relationships unless they are sure they have passed their medical examination (that is only fair) and this is another delay. Senior foreign workers who are working for the largest corporations in Canada as well as presidents of medium and small companies are shaking their heads in disbelief. It is especially the progressive small companies that feel the pinch if a foreign worker is not here within a reasonable time. How could this be improved? With smart policy changes, a change in priorities and providing more resources (in that sequence).

What policy changes you may ask? Here is an example: Currently foreign worker applicants may only complete their medicals after a submission is made for a work permit. Medical examinations may not be done in advance and that adds to longer delays. Closely related to the idea of medicals-in-advance are the requirements of Regulations 198(1), 198(2)⁴ and 30(4)⁵ that CIC does refer to, but makes impossible to achieve. It's a Catch-22. A visa exempt foreign worker who requires a medical certificate for occupational or travel reasons cannot hold a "medical certificate" when they apply for a work permit at the port of entry because a foreign worker can only obtain medical approval when they apply for a work permit at the foreign visa post. Therefore an applicant will not have a medical certificate at the POE.

Some say medicals-in-advance cannot work because there are too many refusals in work permits and that unnecessary medicals will drown the system or medicals will get "lost" without file references. Easy to solve: only keep this option open for skilled occupations, print medical forms with unique numbers such as IMM5401 and add a surcharge for medicals in advance to deter "high risk" candidates. NB

According to hear-say evidence the priorities of CIC (as set by the Minister and the ruling party) is PNP, Quebec, Family and

⁴ SOR/2002-227, s. 198.

⁵ SOR/2002-227, s. 30.

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centre, but rather a profit centre with an economic multiplier effect. The Minister of Service Canada should not hesitate to allocate more resources to this section if that is needed to shorten waiting periods.

Citizenship and Immigration Canada

CIC on the other hand has developed a much better and transparent policy. The Chapter on Foreign Workers in the Immigration

Investor, and that foreign workers are not high on the list. I suggest that these priorities be justified and published to the immigration industry. It is inevitable that CIC will not be able to please everyone (political masters, pressure groups, CAPIC, CBA, Service Canada) but transparency will assist the industry to understand CIC better. The alternative is to use *Access to Information*⁶ requests to obtain access to the priorities of the Minister and CIC, which would be unfortunate if the industry must force CIC to publish their operational priorities.

Conclusion

This article is an effort to stimulate debate and to obtain some momentum on the issues. It is also worth mentioning that I have met excellent officers and supervisors of Service Canada and CIC, who are very cooperative and who are positive in attending to the needs of employers and clients – it is the system and not the people that requires changes.

IRPA has two broad objectives: Humanitarian (Family Class, H & C, Refugees, etc.) and Economic (Investors, Federal Skilled Workers, PNP and Foreign Workers) objectives. Not enough is done to bring these workers to Canada quickly whilst procedural fairness and rights of employers and workers are being ensured. This is largely due to the absence of transparent policy at Service Canada as well as strange priorities; unused policy windows of opportunity and the lack of resources at CIC.

If one reads the “Competitive Advantage of Nations” by Michael Porter of the Harvard Business School (published in 1990) or “The Principle of Political Economy” by David Ricardo (published nearly two hundred years ago in 1817) it becomes clear that economic growth and a high standard of living for the citizens of a country is only possible if a country has a competitive advantage in the international marketplace. Obtaining the required human resources fast enough to achieve or retain a particular competitive advantage for an individual company, industry or at the national level, is paramount.

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⁶ R.S.C. 1985, c. A-1.