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Immigration Law and International Recruitment

Minister of Employment, Workforce Development and Labour, Hon MaryAnn Mihychuk

Attention: Chief of Staff, Mr Matthew Mitschke

Attention: Director Operations/Policy advisor, Ms Leah Van Houten

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Canada

Tel: 819-654-5611

Copy: **Mr Bernie Derible**, Director Issues Management and Deputy Director Chief of Staff at Office of Immigration Refugee Citizenship Canada

Copy: **Ms Janet Goulding**, Director General Temporary Foreign Worker Directorate, Skills and Employment Branch, Employment and Social Development Canada,

18 August 2016

Dear Mr. Mitschke and Ms. Van Houten

CONCERNS ABOUT VARIOUS POLICY PROBLEMS WITHIN ESDC FOREIGN WORKER PROGRAM

Objective

1. The letter is written to express concerns about the Labour Market Impact Assessment (LMIA) policy and process and to make productive, practical and conducive recommendations. I have represented employers in Labour Market Opinions (LMOs) as well as LMIAs for the past 14 years and have first-hand experience of the serious and ongoing LMIA policy problems which I intend to address herein.

Approach/Scope

2. In this letter the following points will be addressed:
 - Relevant Economic Trends in Canada
 - Previous 7 Years within Employment and Skills Development Canada (ESDC) and s 3(f) of Immigration and Refugee Protection Act (IRPA)
 - ESDC & IRCC Policy Disconnect with Labour Market
 - Technical and Specific Policy Issues

- Recommendations

Executive Summary

3. Currently Canada is experiencing significant economic challenges which include a reduced tax base as a result from the international downswing of commodity prices and large debt levels (national, provincial and municipal). It is critical that Canada's immigration programs support our national economic plans and be dovetailed with other national strategies.
4. Immigration, Refugee and Citizenship Canada (IRCC) allows immigrants to stream into the country on the basis of the dubious Express Entry formula used to measure an immigrant's human capital. Many of these immigrants potentially have skills which are not in demand and skills in occupations with high unemployment.
5. Concurrently, Service Canada refuses between 34 and 40 percent of LMIA's requested by employers who have advertised extensively to find Canadians without success.
6. A root causes for the high refusal rates is a combination of hidden/ secret policies and policy voids that unforeseeable inconsistency in the operation and application of LMIA policy.
7. The current Immigration and Refugee Protection Regulations (IRPR) were promulgated 14 years ago but ESDC has yet to provide clear rules on LMIA's. The rules that is available only is only the highlights and is has many shortcomings. The previous in-house manual given to officers was more than 500 pages
8. The Auditor General indicated in her 2009 report that clear rules on LMIA's are vital, but 7 years later this too continues without resolution.
9. Employers are audited for compliance with employer conditions (with potentially onerous penalties) at a rate of 1537 inspections from 1 January - 15 August 2016. Service Canada refused to release the conditions forming the basis of the audits for over 2 years. The conditions were eventually released only after an Information Commissioner Report.
10. In conclusion, the state of the immigration programs discussed herein operate in contradiction to s 3(f) of the IRPA (which advocates consistency), and to the detriment of industry needs and Canada's economic prosperity. There is undoubtedly a responsibility and a call for coordination between ESDC and IRCC to move forward.
11. It is hoped that under the new government accountable and decisive action can be taken to correct these previously ignored issues.

Relevant Economic Trends in Canada

12. In 1963 the economist Harold Innis wrote a paper which was a description and critique of the Canadian resource-dependent economy. He argued for a diversification of Canada's industries

away from the traditional resource base. It was referred to as the “Staple” Economic Theory or the “staples trap.”

13. Sixty years later the commodity super cycle is in full downswing. Coal, iron ore, uranium potash, and oil are all at rock bottom prices. As a result, Canada is being caught in the economic trap that was foreseen by Innis decades ago.
14. By 1999 five high-value added manufacturing sectors (automotive, aerospace, other transport equipment, machinery, electronics and consumer products) accounted for about 60 percent of Canadian exports.
15. At the same time primary sector (agriculture, energy, mining and forestry) accounted for 25 percent of the exports (Source; Jim Stanford in a paper published by Institute of Research on Public Policy and quoted in a Global and Mail article named Signs of Change: Canada’s new Economic Reality on 4 Aug 2016).
16. Today Manufacturing’s share of employment is approximately 10 percent as Manufacturing represents only 11 percent of GDP, down from 60 percent 26 years ago.
17. Canada’s national, provincial and municipal debt is also at record high level without a strong resource economy to assist us to wipe out the debt.
18. Canada (like many other resource dependent countries) needs to work itself out of the economic trap with intelligent, well organized strategic policies on all fronts.
19. Prime Minister Trudeau said: “My predecessor wanted you to know Canada for its resources. I want you to know Canadian for our resourcefulness.” The Prime Minister clearly understands the challenge. Steps are already being taken, including the appointment of Minister Navdeep Bains with the innovation file.
20. What does this mean for ESDC, IRCC and the LMIA processes? IRCC and ESDC have a joint responsibility to assist Canadian industry to attract the best and the brightest in the world. Hopefully the government can play a facilitative role instead of making decisions on behalf of industry about who is most suitable to immigrate.

ESDC & IRCC Policy Disconnect with Labour Market

21. **Immigrants are streaming into Canada through the ‘Express Entry’ system of indiscriminately ranking immigrants in different immigration classes. A quick experiment might reveal important information: Determine the twenty occupations with the highest number of Employment Insurance claims in the past 18 months. Then check how many immigrants have immigrated during this time via Express Entry in these high unemployment occupations. Before even checking these facts, the risks of Express Entry are obvious.**

22. In contrast, employers who have a need for specific immigrants' skills and expertise, after advertising extensively domestically, are being refused LMIA's on the basis of technicalities at a rate of between 34 and 40 percent (based on 2015 figures). Further down, some causes of these refusals will be reviewed.
23. Express Entry does not necessarily reflect the needs of Canadian employer (industry). However LMIA's do reflect the needs of employers and the LMIA should be supported and nurtured. This is pivotal issue that is probably not understood. Enormous resources are pushed into Express Entry and the LMIA process is becoming a squandered opportunity. Express Entry immigrants are not going to small town where they are needed but tend to go to Toronto, Vancouver and other large centers.
24. IRCC opens the floodgates to immigrants through Express Entry while ESDC keeps immigrants that is desperately needed out of Canada through high rates of LMIA refusal. I have read e-mails from bureaucrats within ESDC even sent e-mails claiming victory in the downturn of LMIA applications and the successfulness of the \$1000 application fees.
25. The complete lack of coordination and lack of a joint strategy is painfully clear.

Previous 7 years of ESDC and s 3(f) of IRPA

26. Before providing specific policy recommendations it is necessary to consider the following overview of ESDC in the past 7 years (starting in 2009).
27. The previous government seemed to have no real desire to resolve the existing problems, despite having been made explicitly aware of such. A number of significant sources brought attention to the deficiencies which were ignored by ESDC/ Service Canada, including: The Auditor General, the Canadian Chamber of Commerce, and the Canadian Bar Association.
28. I also personally met with the previous Minister's Chief Policy Advisor and wrote to the Chief Policy Advisor and the Chief of Staff about my concerns. Two of these letters are enclosed for your reference (**Enclosure 1 and 2**). Many important policy inquiries sent to Service Canada and ESDC were never answered despite having been submitted up to three times over several years. It is doubtful that my questions were even received to be considered by ESDC/ Service Canada. Some inquiries sent to the officials within ESDC & Service Canada also remain unanswered.
29. In the fall of 2009 the Auditor General Report invaluabley wrote about the Temporary Foreign Worker Program within ESDC:

“Human Resources and Skills Development Canada’s practices do not ensure the quality and consistency of decisions when issuing labour market opinions.

2.96 We expected that HRSDC would process LMO applications efficiently and that it would have mechanisms in place to ensure that decisions were uniform and in compliance with the Immigration and Refugee Protection Act and Regulations, and the Department's own established procedures.

2.97 We reviewed the process in place at HRSDC to issue labour market opinions, using a statistical sample of LMO applications processed between 1 October 2007 and 30 September 2008, along with the documentation provided to HRSDC by the employers. We also interviewed HRSDC employees at the Department's headquarters and in four regional offices.

2.98 We found that HRSDC has implemented a number of initiatives aimed at improving the administration of labour market opinions. For example, in Alberta and British Columbia it established a pilot project, the Expedited Labour Market Opinion (e-LMO), which significantly reduced the time it took officers to process LMO applications that were part of the pilot. Other initiatives include centralizing the processing of LMOs for live-in caregiver positions to shorten processing times and make more consistent decisions. Due to initiatives such as these and to staff increases, average processing times for LMO applications overall improved from 38 days in the 2007-08 fiscal year to 17 days in the 2008-09 fiscal year.

2.99 **However, we found that directives on how to assess whether employers meet some or all of the factors outlined in the Regulations are not clear or are incomplete; interpretations vary from one regional office to another and even within the same office.** For example, directives on determining prevailing wages do not provide specific guidance and are not well understood by HRSDC officers. Furthermore, each regional office uses labour market information differently to assess and determine prevailing wages. **Also, until January 2009, directives on how to assess whether employers have made reasonable efforts to advertise job offers to Canadian citizens or permanent residents prior to requesting temporary foreign workers were not clear and did not provide criteria to perform such assessments.** During the course of our audit, HRSDC has issued revised instructions aimed at clarifying employer requirements and **providing clear and consistent evaluation criteria.** We were also told by HRSDC officers that formal training was limited to an introductory course on how to assess applications for labour market opinions; it did not include reviews or updates of procedures. HRSDC officials informed us that from March 2009 to May 2009, using updated training material, national headquarters staff conducted training sessions in the regions.

2.100 Many of the files we reviewed lacked adequate documentation to support the opinion. There is no formal quality assurance system to ensure that opinions are consistent and compliant with the Act and Regulations. Toward the end of our audit, HRSDC initiated a project to develop a national quality assurance framework aimed at ensuring greater consistency of decisions across Canada.

2.101 Recommendation. Human Resources and Skills Development Canada should:

- provide clear directives, tools, and training to officers engaged in issuing labour market opinions; and
 - implement a quality assurance framework to ensure the quality and consistency of opinions across Canada”.
30. From this report, it can be seen that the Auditor General found that clear LMIA policy would contribute to consistent decisions across Service Canada in different offices.
31. Further, the issues and suggested corrections identified by the Auditor General fall within the scope of Section 3 of IRPA, which stipulates the following:
- “(f) to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces;”**
32. Subsequent to the Auditor General Report, a manual for the temporary foreign worker program (the Manual) was written in 2010 under the direction of Director General Andrew Kenyon. It was confirmed multiple times that senior development officers alone had access to this manual. The manual has remained hidden after repeated requests over many years to have it published. Akin to the Bible in the arbitrary Middle Ages where only Priests could read and interpret the Bible and the parishioners had no choice but to believe the Priest’s interpretation. At the Canadian Bar Association meeting of April 2015 in Calgary, Minister Kenny was asked publicly why the Manual was not made available and his response was he would review the details. There was no further response on the matter by the Minister that we are aware of.
33. In December 2014, \$80 000 was invested by ESDC to have work done on the Manual. A copy of the result was obtained under the Access to Information Request. Please see **Enclosure 3** for a copy of the contract in which \$80 000 CAD was awarded for the work.
34. Twelve months later, on 16 December 2015, ‘the Manual’ **was removed as part of the core requirements of the program**. See the e-mail by Samantha Young, a Business Expertise Advisor (**Enclosure 4**). The CAD80 000 seemed to be an absolute waste of taxpayers’ money.
35. As a result of a national policy lacuna within ESDC there is growth in regional policies (so called Western Territories policies) as the regions try to compensate for the policy void that exists as a result of national level policy mismanagement. At this point we have come full circle back to Fall 2009 and inconsistent decision making across the country. The available information of the past 7 years shows no progress to speak of. Please see regional policies by Service Canada in **Enclosures 5, 6 and 7**. These policies are published by the Service Canada office in Vancouver for LMIA decisions submitted by employers in MB, SK, AB and BC.
36. A ESDC officer administering Access to Information requests said on Friday 19 Aug 2016 that the ESDC head office redacted large sections of the LMIA policies of the Western Territories (Enclosures 5, 6 and 7) as there is a concern that these “regional policies” might not be “in line”

with the national policies. This is a very valid concern from the ESDC head office. **Clearly, if the head office had policies in place, the regions would not need to write external ad hoc policies. The rhetorical question is: Why have LMIA rules that are supposed to guide officers in making LMIA decisions not yet been written, 14 years after the IRPA was promulgated and 7 years after the Auditor's report?**

37. The Canadian Chamber of Commerce published a report in January 2016 named "Immigration for a Competitive Canada: Why Highly Skilled International Talent is at Risk" (see <http://www.chamber.ca/publications/reports/>). I would like to highlight the following from page 18:

"The principles of fairness, objectivity and transparency should be central to the government's administration of programs governed by legislative statute. When the enhanced compliance regime for the TFWP and LMIAs was proposed in the fall of 2014, the Canadian Chamber urged the government to balance the discretion of civil servants, who can impose severe fines and program bans, with procedural fairness, starting with transparency. Both elements are still lacking from the current regime. Discretionary decisions made by administrative decision-makers should be relevant, reasonable and consistent, with the process free of any abuse. Unfortunately, this has not been the case with past LMIAs. It is imperative to the overall success and economic well-being of Canadian businesses that the administrative decision-makers of the LMIAs and the TFWP be subject to the standards outlined under Canadian administrative law. Given the inconsistent and contradictory information that employers receive from Service Canada officers handling these applications, including those in the same office and those in different provincial offices, the Canadian Chamber is concerned that employers trying to follow the rules will nevertheless be subject to incorrect decisions or, during compliance audits, subject to unwarranted and harmful fines and bans Recommendation. **The Government should develop a fully transparent set of guidelines and criteria regarding the LMIA and the TFWP so that everyone is on the same playbook.**"

38. The Canadian Barr Association wrote in their report named "Express Entry and The Temporary Foreign Worker Program" dated April 2016 on page 5 about the same lack of transparency. On page 7 of the report, the following was recommended: **"Publish compliance manuals, guidelines and operational instructions provided to officers so employers can understand the compliance standard to be met."**

39. Despite the comments by two large national organizations and an Auditor General report in 2009, the ESDC's horizontal objectives have no mention of clear policy as an objective (See http://www.esdc.gc.ca/en/reports/rpp/2016_2017/horizontal_initiatives.page).

Technical and Specific Policy Issues

40. Improper Administration Of Information Act Requests & Interference With Transparency: When Access to Information requests are submitted, ESDC has repeatedly inappropriately redacted information. Two examples will be referred to:

- a. In January 2013 a request was submitted under the Access to Information Request, to obtain the list of conditions that employers who employ foreign workers must comply with. This was especially relevant as the previous Minister of ESDC had publicly made comments about the non-compliance of employers. In doing so, he created the impression that there was non-compliance by employers on a large scale which in turn led to public outrage.

It is interesting to note that Professor Andrew Stevens from the University of Regina said in the Leader Post on 4 July 2014 and Star Phoenix on 30 June 2014 "I would guess that the public reaction has fueled about 90 per cent of these recent changes." Mr. Stevens referred to the essentially radical changes made by the previous government in the low skill LMIA program as a result of isolated incidents of non-compliance, in attempt to keep the public onside.

A journalist from the National Post, Mr John Ivison wrote the following in the National Post on 29 June 2014: "This is not the national crisis the opposition parties would like to make it. It is a political, not an economic, problem — and Mr. Kenney has provided a political solution. Since solved problems are not news, he amplified the trouble and then presented his fix. The temporary foreign worker walnut could have been cracked without taking a jackhammer to it. These reforms are a solution looking for a problem."

Amongst other radical changes, Mandatory Administrative Penalties were implemented for any employer to be found in non-compliance.

Notwithstanding, when the list of conditions were requested, ESDC and the Minister of ESDC agreed not to release the list of conditions that employers must comply with. The contradictory and illogical nature of this refusal is obvious.

We submitted a complaint about the secrecy of ESDC in this matter to the Office of the Information Commissioner (OIC); on 2 April 2015 the OIC sent a final report and it was stated that our complaint was well founded. The information was released and after a 2-year struggle, employers are now finally aware of the conditions they must comply with. Please see the OIC report at **Enclosure 20**.

- b. Please see **Enclosures 5, 6 and 7** for heavily redacted LMIA policies. In Enclosure 7 the majority of the policies were inappropriately redacted. Section 16 (2) of the Federal Access to Information Act is a discretionary, injury based, exemption where the release of information could reasonably be expected to facilitate the commission of an offence. According to ESDC's explanation (see paragraph 26) the actual reason for the redaction was ESDC's concern about the incorrect interpretation of the regulations (and not the commitment of an offence).

41. Common Practice Of Technicality Based Refusals: Recently we have seen triage units at two Service Canada offices call our office when something minor was missing from a submission instead of issuing an automatic refusal. This is a big improvement on the situation where LMIA

applications were shredded if 1 digit of a credit card could not be read (for example), but a consistent conducive (instead of destructive) attitude is yet to be shown.

42. Arbitrary Reconciliation Of Annual & Hourly Wages: A LMIA application will not be accepted if the hourly wage is not completed on the LMIA application form. If an employer only pays a foreign national an annual wage, there is no hourly wage. Still officers demand an hourly wage to be included in the form, after which employers are being audited on this forced calculation of hourly wages. For example, in British Columbia certain managerial positions are not eligible for overtime and are not paid hourly. This obsession with hourly wages in all circumstances even when not appropriate, is a "union" attitude which shows a lack of understanding of the business (industry) which creates wealth for all Canadians.
43. Ongoing Recruitment & Forced Usage Of Jobbank: Some LMIA policies do not make sense at all. A current rule requires employers to continuously advertise ("ongoing recruitment") to attempt to find Canadians until the time at which a LMA decision is made. The policy specifically requires that employers must use the jobbank when continuous advertising/ongoing recruitment is being demonstrated. When officers are asked why other advertising (not the government's jobbank) is not accepted to demonstrate ongoing recruitment the answer is always that an employer can motivate why other sources are more appropriate. With this answer officers create the idea that the concern is deemed invalid. This response is a quintessential answer from Service Canada. The question is not answered but a counter argument made as a parade of power. **Why must hundreds of employers argue why the jobbank is not appropriate?** The jobbank has very very serious shortcomings as explained in my letter dated 12 August 2016 (**Enclosure 14**). In this letter it is explained that policy and operational concerns about the jobbank were repeatedly ignored by the ESDC. Nine months after the letter was sent we received an email response (**Enclosure 15**). The response is vague and does not address the problems of the jobbank. This is a typical bureaucratic answer and there is no engagement in a sensible discussion about the real issues.
44. Lack Of Labour Shortage Definition: When a LMIA request is assessed an officer must assess 11 factors (7 of the labour market and 4 of genuineness). One of the factors an officer must assess is whether there is a "labour shortage". The IRPR was promulgated in June 2002, and 14 years later the government has not yet provided a definition/s for the interpretation of the relevant "labour shortage." Please see an article about the different definitions of "labour shortage" across different offices of Service Canada (**Enclosure 16**). As you will see, ESDC does not have a policy and each office of Service Canada uses their own ad hoc definition of labour shortage. The situation is close to being chaotic.
45. Conclusions Not Reasons For Refusal & Procedural Fairness: Another serious issue with LMIAs is the lack of procedural fairness with reference to reasons for refusals. In 14 years I have had very few refusals. In the majority of refused cases my clients requested leave to appeal to Federal Court, the majority of which were settled. I have however seen several refusals from unrepresented employers wherein actual reasons for the refusals were rare, usually only conclusions were given. An officer would typically refuse an application because of a claim that there is no "labour shortage," without clarifying what this means (number of EI claims, not

enough vacancies, etc). Employers are routinely left in the dark about the actual reason for the refusal/ decision.

46. Ignorance Of Policy Problems & Lack Of Interest In Resolution: As previously mentioned many policy inquiries sent to regional offices are simply never answered. In **Enclosure 17** an e-mail is provided about a policy inquiry from 17 February 2016 (6 months ago). In **Enclosure 18** the e-mail shows that the officers themselves do not know the answer. Officer Sue Surgenor cannot be blamed for not having the answer as this policy problem should have been resolved by National Head Quarters (NHQ). Several years ago, it was suggested to ESDC that an e-mail address be established to which authorized representatives could direct their policy questions. This request was ignored. For example, IRCC does have an email address (immigrationrepresentatives@cic.gc.ca) where policy questions can be sent to. This has three benefits for IRCC:

- a. It allows a consistent national policy interpretation.
- b. It allows IRCC to be made aware of potential policy issues that can be addressed with national policy amendments.
- c. It frees officers and management up to do their work and be more productive.

47. Failed Federal Court Settlement Term & Use Of Council In LMIA's : In 2013 a working group was formed as part of a Federal Court Settlement. The agreement was that ESDC and three Authorized Representatives would jointly write a directive on the use of Counsel in LMIA applications. The discussions remain confidential between the Minister, his counsel, Mr. Steven West, Mr. Mario Bellissimo and myself. Those negotiations failed to produce a new directive. The question is why did it fail? I would like to discuss the reason with confidence with the Minister or a representative within the Minister's office.

48. Counsel. There is no clear policy for officers in how to work with counsel

49. No Experience Requirements on approved LMIAs. Approved LMIA's contain the education requirements that a foreign national must be able to demonstrate. The required experience is not listed on the approved LMIA. As a result of this shortcoming foreign nationals do not understand the experience requirement and that must be met. This leads to work permit refusals. At the visa office in Pretoria the refusal rate for work permits is between 20 and 25 percent over the past 3 years. Therefore employers can not employ the people they desperately need.

Consequences of Policy Problems

50. One of the results of hidden LMIA policies described above is probably the high refusal rate of LMIAs (**34 percent** for the first 7 months of 2015 and **40 percent** of the last 6 months of 2015, see **Enclosures 12 and 13**). If clear LMIA policies replace policy voids, and employers are made aware of such, they can prepare submissions accordingly and ESDC officers can also make proper and well guided decisions. This would ensure proportionately higher approval rates.

51. The above mentioned refusal rate would have a reasonable negative effect on productivity and profitability causing a negative effect on economic growth.
52. The combination of secret policies and policy vacuums results in Service Canada officers creating incoherent, ad hoc rules. Two examples are as follows:
- a. **Enclosure 8** is an article published about the role of Employment Requirements of the National Occupation Classification (NOC) system when LMIA decisions are being made; the argument is that Service Canada officers ignore constitutional issues during LMIA decisions. An Access to Information request has shown that ESDC has no policy about the Employment Requirements of the NOC. Nonetheless, officers routinely refuse LMIA applications claiming the employment requirements of the NOC have been exceeded without any existing policy to support their decision.
 - b. In August 2012 a letter was written to the Minister of ESDC concerning the assessment of the genuineness of job offers (**Enclosure 9**). This assessment is a statutory requirement when assessing LMIA Applications. ESDC acknowledged the letter on 19 October 2012 (**Enclosure 10**). The letter in Enclosure 9 was subsequently published in an article in the Canadian Law Magazine ImmQuest (**Enclosure 11**). Four years later the policy problem has not yet been resolved and officers are still not appropriately guided on this issue. In assessing the genuineness of a job offer, officers essentially determine whether the employer can pay the salary of the foreign worker. In doing so, officers are only directed to retained earnings (money under the mattress) and ignore other sources of funds. A LMIA request was made on behalf an Ontario employer to appoint a Technical Sales Representatives to sell unique technology in the mining sector. The LMIA was refused twice based on policy that does not exist (File number 8111505 and File number 8133077). The employer has sought relief through the federal court and eventually the Department of Justice (DOJ) settled the matter. The officer claimed in an e-mail that the job is not genuine as foreign income by the employer cannot be used to show funds to pay a salary: **“The contracts provided are for business outside of Canada and would not be subject to the laws covered by Canadian legislation.”** This reason is absolute nonsense and the DOJ agreed by stating that the officer’s decision was not “transparent, justified and intelligent.” This wasteful court case could have been prevented if the policy suggestion in Enclosure 9 had been adopted. This was the second time we had to approach the federal court on the same issue. Employers applying for LMIAs are running on chaotic policy wheels like hamsters and repeatedly face the same nonsensical decisions by officers.
53. Unguided officers are making inappropriate decisions. This causes significant time spent unnecessarily by all parties (Officers, Employers, Judicial System, and Representatives).
54. This inefficiency translates into the economy where response to industry needs are unduly delayed or unmet and taxpayers’ hard-earned money is squandered.
55. No accountability/mechanism for accountability results in inconsistent, unforeseeable and arbitrary policy application.

Recommendations

56. The following is respectfully recommended:

Overall

- a. Recognize the importance of the objectives of IRPA and strive to implement the letter and the spirit of IRPA with specific reference to Section 3 (f) of IRPA.
- b. Implement strategic coordination and cooperation between ESDC and IRCC to ensure a coherent and complimentary strategy is implemented.

Respect Suggestions/Comments from Industry

- c. ESDC should have genuine consideration and serious attention to policy suggestions and to stop providing bureaucratic answers (“Lip service”) without diligent consideration of the proposals that are being made.
- d. ESDC should cease unproductive practice of providing “departmental” answers just for the sake of providing a response.

Support Transparency

- e. Review the reasons for regular and inappropriate redactions of basic LMIA policy when it is being requested through Access to Information Requests.
- f. Review the outcome of investigations against ESDC by the Office of Information Commissioner of cases where ESDC redacted information.
- g. Educate ESDC employees on the actual meaning of Section 16(2) of the Access to Information request and train them to appropriately apply these exemptions.

Practical Issues

- h. Stop forcing employers to calculate an hourly wage on LMIA applications even when the wage is not calculated hourly, and an employee is not eligible for “overtime”.
- i. Adjust the ESDC objectives to include transparent and public policy as a high priority.
- j. Publish these rules/policies for employers to have access to such.
- k. Publish clear rules about the role of the Employment Requirements of the NOC within LMIA's. Please do not ignore the constitutional issues mentioned in the enclosed article.

- l. Formulate and publish clear rules about the role of authorized representatives within LMIAs.
- m. Provide policy to guide officers about reasons for a refusal. Officers should understand the duty between reasons and conclusions so that when a LMIA is refused officer may provide the actual reasons, not just conclusions.
- n. Ensure policy addresses the need for procedural fairness.
- o. Be flexible and realistic in rules about LMIA advertising requirements, for example: Do allow continuous advertising in reasonable forms, not just the government's website (www.jobbank.gc.ca).
- p. Stop forcing employers to use the national jobbank as a prerequisite to apply for a LMIA. It is understood that if an employer is not using the jobbank a motivation must be provided. This is simply not good enough. Stop forcing employers to use a tool that has lost it's relevance and usefulness.
- q. **Create an e-mail address at ESDC whereto policy questions can be directed by employers, authorized representatives, and the legal industry.**
- r. Address the ongoing problems with regards to retained earnings and the evidence required to show enough cash to fund a current liability, such as salary. You may be directed to the letter in Enclosure 9 and use the content as needed.
- s. Please review the reasons for the failure of the Henrisken National Working Group and restart the working group with the intention of a productive outcome (see **Enclosure 19** for background).

Respectfully yours

Cobus (Jacobus) Kriek
Regulated Canadian Immigration Consultant
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Enclosures

1. Letter written to Minister of ESDC dated 8 January 2014.

2. Letter written to Minister of ESDC dated 15 November 2014.
3. Copy of Contract for \$80 000 for TFW Manual contract
4. E-mail by Samantha Young, re: TFW Manual removal, dated dated 22 December 2015
5. Regional Policy about Recruiting, Agriculture and Global Factors, File No A -2016-00420/WM).
6. Regional Policy about Name Changes, Cap Calculations, FWS Q&A, Registration of applications and Transition Plans, File No A -2016-00424/WM.
7. Regional Policy about Owner Operator LMIA's File No A-2016-00419/WM.
8. Article Published in ImmQuest Magazine about Employment Requirements of the NOC dated April and may 2016
9. Letter about Genuineness of job offers and the ability to pay the wages dated 14 August 2012.
10. Response from ESDC dated 19 October 2012.
11. Article published in ImmQuest Magazine about Genuineness of Job offers with reference to the ability to pay the wage dated Sept 2011
12. Refusal rate for LMIA in Saint John for first 7 months of 2015, for permanent residence case of 40 %: File number A -2015-00538/EM.
13. Refusal rate for LMIA in Saint John for the last 6 months of 2015, for permanent residence case of 34 %: File number A -2015-00538/EM.
14. Letter about the shortcomings of the Government's jobbank dated 12 Aug 2015
15. E-mail response about jobbank problems dated 9 May 2015
16. Article about labour shortage published in ImmQuest Magazine dated May and June 2015
17. Unanswered e-mail with policy inquiry, re: whether the Agriculture Stream is compulsory, dated 17 February 2016.
18. E-mail showing difference of opinion on policy dated 8 March 2015.
19. Background about Working Group as part of the Henriksen Case.
20. Report from the Office of the Information Commissioner dated 2 April 2015