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Immigration Law and International Recruitment

Minister of Immigration Refugee Citizenship Canada

**Attention: Director Issues Management and Deputy Chief of Staff,
Mr Bernie Derible**

365 Laurier Avenue West

Ottawa, Ontario

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Canada

613-954-1064

15 August 2016

Dear Mr. Derible,

SUGGESTIONS FOR IMMIGRATION POLICY CHANGES

Objective

The purpose of this letter is to introduce myself and to make a small number of suggestions for policy changes for skilled workers.

Introduction

My name is Cobus Kriek and I have been working in my own immigration law consultancy for 14 years. Prior to my career in immigration I was working as an economic/industry analyst for about 10 years.

I also hold a post graduate degree in Economics, a Post Graduate Diploma in Export Management (majoring in International Trade Law) and a Graduate Diploma in Immigration law. The culmination of my education and experience lay within immigration law and economics.

Significant resources have been allocated to concepts such as low skilled workers but very little attention has been given to the effectiveness of legislation for high skilled immigration.

**Policy Suggestion 1:
Allow holders of LMIA Exempt WP to apply for PR (including ITCs)**

Several years ago it was possible for holders of LMIA exempt work permits (such as intra company transferees (ITC)), holders of open work permits, or holders of post graduate work permits to become permanent residents through federal programs.

In these cases, a person holding a LMIA exempt work permit with a permanent job offer, was able to obtain points to be able to emigrate. That is also known as “arranged employment.”

The actual authority of an ITC work permit is “significant economic benefit” as explained in my article (please see Enclosure 1). This is the first and only time the concept was defined.

Our company has been approached by foreign nationals in various industries who are currently working as specialized knowledge workers within the ITC program, but who are not able to apply for permanent resident visas. Some of these foreign nationals work for well-known companies such as:

- a. XXX
- b. XXX
- c. XXX
- d. XXX
- e. XXX

In theory, IRCC officials would state that applicants whom are working on LMIA exempt work permits should apply in the Provincial Nominee Class, but in reality it does not work:

- Ontario’s program is not working as there are too many applications, it even closed in April 2016.
- Alberta has the same problem and it can take 3 years for a request to be renewed.
- British Columbia’s provincial nominee program favours high skilled individuals with high wages in remote areas (to the exclusion of many theoretical applicants).

Despite unique skills, specialized knowledge and making a significant economic contribution, the existing policies make it basically impossible for holders of ITC work permits to qualify for permanent resident visas.

At the same time foreign applicants without Canadian job offers, without Canadian work experience and without unique knowledge are allowed to emigrate through Express Entry based on their perceived value.

The IRCC should allow all holders of LMIA Exempt work permits to apply for permanent residents by giving them Arranged Employment points in any Federal Immigration Class.

IRCC should also expand its in-house definition of “significant economic benefit” as it is basically non-existent. The article in Enclosure 1 can be used as a resource.

Policy Suggestion 2: Define Labour Shortage in LMIA's

Please see the article about “labour shortage” at Enclosure 2.

In my letter to the Minister of ESDC (a copy will be sent to you as well), it was suggested that the federal government take a position on what “labour shortage” is.

Up until recently, officers of Service Canada would refuse LMIA's based on the claim of “no labour shortage,” without even knowing what this concept means.

The claim of “no labour shortage” is one of the loopholes by Service Canada officers to refuse as many applicants as possible, even when genuine needs exist.

It is understood that LMIA's are not the responsibility of IRCC, but it is important to understand the bigger picture: IRCC is allowing young highly qualified people without job offers to emigrate, but those with Canadian job offers are refused based on technicalities and abuse of administrative power by ESDC.

The federal government (ESDC) should provide some guidance to officers about what a labour shortage actually is in place of using the claim of “no labour shortage” to refuse LMIA's.

Policy Suggestion 3: Define and Educate Officers on Right of Employers (Reference to Employment Requirements of the National Occupation Classification or “NOC”)

IRCC Visa officers refuse work permits as they claim the Employment Requirements of the NOC have not been met (please see Enclosure 3).

Interestingly, the internal rules of the federal government (IRCC and ESDC) show that no guidelines are being provided to officers about this important concept, but that decisions are being made in a policy lacuna.

The root cause of officer's avid use of technicalities and policy loopholes to refuse work permits (or other applications) is the existence of an apparent “policemen of Canada” attitude and identity which has spread like wild fire throughout visa offices.

It is suggested that this policy lacuna is addressed by good policy. It would also require cooperation between IRCC and ESDC, as ESDC suffers from the same shortcomings.

Once again the needs of industry are being cast aside to make way for the “IRCC knows best” approach whereby work permits are unreasonably refused and decisions are being made on behalf

of employers. The employer with acute industry experiences and needs, who has already interviewed and verified the suitability of a foreign national is being ignored.

POLICY SUGGESTION 4

Reactivate AEO's

Currently an LMIA stands on two legs: A Labour Market Test (advertise to show a Canadian cannot be found) and Genuineness Test (is the job real?).

Several years ago a special type of LMIA existed and it was called an Arranged Employment Opinion (AEO). The employer only had to prove the job was genuine and no advertising was required.

Once again it is understood that LMIA's are the responsibility of ESDC, but for many years IRCC and ESDC have not been well enough coordinated on high level policy. I received an e-mail from a previous policy advisor at CIC indicating that the CIC did not get sufficient answers from ESDC and sometimes they had to wait months for feedback.

An analyses of the effect of current policies shows this lack of coordination: Express Entry Applicants are allowed to stream into Canada (even in occupations with high unemployment) but Canadian Employers that offer jobs to foreign nationals are facing LMIA refusals based on technicalities.

The AEO concept still exists in the case of certain provinces such as Saskatchewan where the SK government only checks that the job is genuine and where no advertising is required.

The current LMIA system is focused on the belief that all jobs are homogenous and personalities do not play a role: Well in certain industries, personality or soft skills are very important. In some cases, employers will only give a job offer to a specific person based on their soft skills such as culture and personality. Recently we assisted one of the largest suppliers of Dairy machinery to bring a South African technician to meet with dairy farmers in the Prairies. The employer wanted to see if the foreign national could communicate with the farmers and if the farmers actually liked him. The South African technician was from Dutch decent and many of the farmers also had Dutch roots. The success of the unique relationship was quickly obvious during onsite visits at specific farms. This cannot be measured with advertising.

Once again IRCC is allowing high skilled, young foreign nationals to emigrate without job offers, but Canadian employers who would like to offer jobs to skilled foreign nationals are prohibited from doing so, as extensive advertising is needed. The advertising cannot easily measure the fine balance of hard and soft skills required in a given unique job climate.

The return of the use of AEOs in the Federal Skilled Worker Class, Federal Skills Trades Class and the Canada Experience Class would be of great benefit to Canadian Industry and Canadian Immigration policy.

Policy Suggestion 5: Premise of EE is a failure (Lessons from the Market of Tomatoes)

Express Entry is based on the premise that:

- a. Young (29 year olds) with only 3 years of experience and Masters degrees will be valuable to Canada; and
- b. Older, more experienced immigrants with job offers from Canadian Employers (AEO, see above) are less valuable.

The misunderstanding is best described by the market for tomatoes. The government (federal, provincial or municipal) does not decide which companies must import tomatoes, what type of tomatoes must be imported, where it must be sold and at what price. Imagine if the government would be involved in the market for tomatoes and attempt to predict supply and demand. All logical and educated individuals will say it is socialism in the purest form and that it will not work. That is one of the reasons why the USSR collapsed and the Berlin Wall was destroyed.

The Canadian Government, however, has been involved in general occupation lists for decades. By allowing these lists to be created and implemented by government it implies that the federal government's intervention in the market for human capital is acceptable, but not the market for tomatoes! The interference in the labour market of human capital has already resulted in the 2002 backlog fiasco. It seems as though very few lessons were learned from that failed project. Root cause analyses will show that the core problem is market intervention by IRCC.

Why is government not involved in the supply and demand for tomatoes? Well, the modern market place is just too complex. Supply and demand for most products and services changes so fast and there is too much information to be analyzed and acted upon by an external group of people (typically called a government department). Unreasonable and unnecessary market intervention is why socialist countries had constant shortages in products (One month only toilet paper and sugar on the shelves and the next month an oversupply of bread and paperclips). Attempts to control the market for goods and services in communist countries failed miserably and eventually the markets and governments of these countries collapsed.

Government has the important role to ensure the imported 'tomatoes' are actually tomatoes (and not a front), that they are not rotten and that they do not carry disease. Similarly, government needs to ensure that imported human capital does not hold risk for Canadian population by checking for criminality and health, and genuineness of job offers. That is where intervention should end.

The Occupation Lists was replaced by an Express Entry system where government is attempting to determine the value of an immigrant for or on behalf of industry – another example of the government's intervention in the selection process on behalf of industry (government knows best).

A quick experiment might reveal important information: Determine the twenty occupations with the highest number of Employment Insurance claims of the past 18 months. Then check how many

immigrants where allowed to immigrate through Express Entry in these high unemployment occupations. Before even checking the facts the risks of Express Entry are obvious.

Please allow industry to determine their need for immigrants (AEO) and do not make decisions for employers and industry. The alternative is to at least limited the decisions being made on behalf of industry and give more decision making power to employers.

Thank you for your time.

Yours faithfully,



Cobus (Jacobus) Kriek

Principle Immigration Council at Matrixvisa Inc.

Member in Good Standing of ICCRC as required by the Section 91(1)&(7)(a) Immigration and Refugee Protection Act of Canada
Quebec/Commissioner of Oaths, Quebec 25 July 2007 TO 24 July 2013, Number 174215

List of Enclosures

1. The Use of the Term Significant Economic Benefit in Canadian Law.
2. Current Methodologies for Identifying Labour Shortage
3. Employment Requirements of the NOC
4. New Wage Methodology in Labour Market Opinions and Immigration Applications