



Authorities investigating job-offer fraud

No charges have been laid over 'anomalies' in skilled worker applications

By Gail J. Cohen
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The RCMP and Human Resources and Skills Development Canada (HRSDC) are investigating possible fraud with permanent offers of employment in the skilled worker immigrant category, according to lawyers in the immigration bar.

"We don't know who or how many [are being investigated]," says David L. Garson, chairman of the Ontario Bar Association's (OBA) citizenship and immigration section and a partner at Guberman Garson in Toronto.

All indications are both lawyers and consultants are being scrutinized.

Garson says they do anticipate charges will be laid but don't know when. The charges had been expected this month but there has been some sort of delay.

"We know the investigation will be coming to a head, we just don't know when," says Sergio Karas, secretary of the OBA's citizenship and immigration section, and vice-chairman of the Inter-national Bar Association immigration and nationality committee. "Everything is very speculative right now."

A spokeswoman for the RCMP tells Law Times she "can neither confirm or deny there is an investigation" - the usual response from police if no charges have been made.

Ron Wilson, HRSDC's manager, foreign work recruitment, Ontario region, tells Law Times his department's role is to provide an opinion to Citizenship and Immigration Canada (CIC) about the job offers in skilled workers' immigration applications.

"In doing that, we and CIC discovered anomalies in the arranged employment," he says.

HRSDC then referred its findings to the "border agencies" and the RCMP "for their action on it," says Wilson.

He has no further information on the status of what the RCMP are doing but adds there were between 80 and 120 anomalies found in the 22,000 applications, including arranged employment, HRSDC received from April 2003 to March 2004.

Wilson says it's a general investigation "around the anomalies in the application process" and isn't focusing on any particular individuals.

As a result of its findings, HRSDC has, over the last couple of months, started phoning employers to validate job offers, says Wilson. He insists this isn't slowing down processing times and HRSDC is keeping to within its 15-day time limit - give or take a few days.

There were also rumours that Immigration officers at the borders were calling employers and turning people back if their employment offers proved to no longer be valid. However, a CIC spokesman had no information about such activity, saying only there may be some delays in processing.

"Expired offers or questionable cases will continue to receive extra scrutiny and CIC will continue to take the required [steps] to ensure points are not awarded inappropriately," says CIC spokesman Jean Pierre Morin.

"Where it is confirmed that the offer of employment was not genuine, the applicant won't get credit for having arranged employment. . . ." That could result in their application being refused, he says.

Karas says he and other members of the executive of the OBA's citizenship and immigration section were asked to a meeting in late April. It was then they learned of the investigation and were told that it was now in the hands of the RCMP.

"The investigation is not a secret," he says. It was made widely known within the immigration bar at a major CLE meeting in May.

"There are lawyers who are perfectly happy that this is happening," says Garson. They are tired of the shortcuts others are taking.

But even if you're not being investigated (and you know if you are, he points out), Garson counsels immigration practitioners to "proceed with caution."

At the heart of the matter is s. 82(2) of the regulations for the Immigrant Protection and Refugee Act. The section awards 10 points to potential immigrants in the skilled worker category who can show they have permanent, full-time employment arranged prior to their arrival in Canada.

Under the act, skilled worker applicants are assessed on points - for example, a maximum of 25 points for education and 20 points for proficiency in English and French. Last year, then-minister Denis Coderre lowered the pass mark to 67 from 75, which immigration lawyers had roundly condemned as too high.

But even with the easing of the criteria, many skilled worker applicants relied on the arranged employment points to put them over the top.

"HRSDC discovered through a pattern of conduct that some lawyers and consultants were 'very creative' with their job offers," says Karas. "We don't know if it was knowing or unwitting."

Although he's not entirely sure what those patterns are, Garson says fraudulent offers of employment could include: wholesale group offers; offers from people who don't follow through; companies that don't have real jobs; or offers sent on faked letterheads of real companies without those companies' knowledge.

"I think that given the law under the IRPA . . . it was ripe for fraud," says Garson, "and I'm not surprised it was taken advantage of."

Karas agrees, saying "there are always people who will try to take advantage and profit from weak points in the system."

He calls it a "ridiculous system" that isn't designed for the reality that it takes three to five years to process the average skilled worker application.

"The entire skilled worker selection criteria are not well thought out. The government wants to keep immigration numbers high but there's no purpose in bringing people if they have no jobs," he says.

How can you, in good faith, offer a job for five years from now? "You've got to be crazy to do that," he says. "Who knows in five years what the market will be like?"

In addition, he says, applicants who receive offers that aren't in good faith don't face any consequences for cheating. He considers that in itself to be an incentive for cheating.

"The only thing that happens is that they get rejected - which they would anyway," says Karas.

Even immigrants who get good faith job offers may arrive in the country after the many years it takes to process their applications and find that there is no longer a job for them. What are they supposed to do then, he asks.

For Karas, and other critics of the IRPA's arranged employment provision, the solution is to get rid of it entirely and drop the pass mark enough that qualified skilled workers, who would be borderline without arranged employment, will still be able to get into the country.

Alternatively, he suggests substituting a temporary work permit, so offers of employment can be taken up in a timely manner. Potential immigrants will then be working while their residency permits are being processed.