

Obstacles to hiring foreign workers increasing

Getting the right approvals and permits more difficult as government focuses on jobs for Canadians hit by recession

BACKGROUND

Foreign worker program changing with times

UNDER THE Service Canada/Human Resources and Skills Development Canada's Temporary Foreign Worker Program, employers are permitted to hire foreign workers to work temporarily in Canada to fill labour shortages in Canada and bring new skills and knowledge to help the country's economy grow.

However, the federal government has implemented changes in the Foreign Worker Program and the Federal Skilled Worker selection criteria as a result of the changing economic times, with the intent of protecting jobs for Canadian citizens and permanent residents. Immigration lawyer Sergio Karas offers a guide through the changes that employers looking to hire foreign workers or who are already employing them should know.

| BY SERGIO KARAS |

OVER THE PAST few years, thousands of foreign workers were admitted to Canada to fill a tight labour market. However, as the economy deteriorated, pressure mounted on Canadian employers to make a more concerted effort to hire Canadian residents. Human Resource and Development Canada's (HRSDC) primary role is to protect the Canadian labour market and employers who wish to hire foreign workers must satisfy HRSDC that they have made sufficient and genuine efforts to hire Canadian citizens or permanent residents. As a result, standards for hiring foreign workers have gotten more stringent.

The criteria for granting a Labour Market Opinion (LMO) to an employer to hire a foreign worker are meant to assess the impact hiring the foreign worker on the Canadian labour market. HRSDC considers such factors as:

- Whether the employment of the foreign national is likely to result in direct job

creation or job retention for Canadian citizens or permanent residents.

- Whether the employment of the foreign national is likely to result in the creation or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents.

- Whether the employment of the foreign national is likely to fill a labour shortage.

- Whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and the working conditions meet generally acceptable Canadian standards.

- Whether the employer has made, or has agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents.

- Whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress, or the employment of any person involved in the dispute.

Service Canada's job advertising policies

In January 2009, the Canadian gov-

ernment implemented several significant policy changes, eliminated the "occupations under pressure list" initiative, which allowed employers to hire foreign workers in designated occupations with minimum or no advertisement, and introduced more stringent minimum national advertising guidelines under which all occupations are now subject before an LMO can be granted for a foreign worker.

The new requirements follow a general rule that lower-skilled positions, for which a foreign worker is being considered, will be subject to more onerous advertisement and recruitment requirements. Yet, the new rules apply even to very highly skilled workers and management level employees. An application for a LMO from any employer which fails to comply with the new minimum requirements will be refused.

National Occupational Classifications (NOC) describe positions in four levels: management or occupations that usually require a university degree; positions that require a college education or apprenticeship training; live-in caregivers and trades.

An employer will comply with the minimum advertising efforts if it advertises with the National Job Bank — or the equivalent — for a minimum of 14 calendar days or conducts similar recruitment activities consistent with the practices within the occupation, such as advertising in recognized Internet job sites, journals and newsletters. There is some degree of flexibility as to the advertising venue for management-level occu-

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Employers must show efforts to hire Canadians

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pations, as they are generally senior positions. However, all advertisements must include the employer's name, business address and wages being offered.

For live-in caregivers and trades, which may require high-school education or job-specific training, in addition to the Job Bank advertising requirements, employers must conduct recruitment activities consistent with the practice in the occupation, or demonstrate reasonable ongoing recruitment efforts. For example, newspaper advertisements in publications of wide circulation, or advertisements in community venues, consistent with industry practices, could be acceptable. In general, advertisement requirements for occupations in this level are more onerous and will be more closely scrutinized.

For all the above occupational levels, advertising must have been carried out no more than three months before the employer seeks permission to hire a foreign worker. The employer should also demonstrate reasonable ongoing recruitment efforts which include communities that face barriers to employment, such as Aboriginals, older workers and other disadvantaged groups.

Elimination of LMO extension

All employers are now required to submit a new LMO application even where the person has previously received an LMO and is still working for the same employer. The application to extend an LMO has been discontinued. In cases where employers anticipate their labour needs will continue beyond the period covered in the temporary foreign worker's work permit, employers should apply for a new LMO at least four months prior to the permit's expiry to avoid unnecessary delays that can disrupt the issuance of a new work permit. This constitutes a significant policy change that will pose severe challenges to many employers, as new evidence of

recruitment efforts will have to be submitted with the new LMO application.

Proof of past compliance

Employers seeking a new LMO may be required to show proof of past compliance with the terms of previous offers of employment to temporary foreign workers. Unless requested, employers are not required to submit proof of compliance, but from a practical point of view, it would be prudent to do so to avoid unnecessary delays.

According to Service Canada, information about compliance with the terms of previous offers of employment can assist Foreign Worker Program Unit officers in determining whether the employer will comply with the new offer of employment. A negative LMO could be issued if a return employer refuses to demonstrate proof of compliance.

In cases where it appears an employer has not fully abided by the terms of a previous offer of employment to a temporary foreign worker, Service Canada officers will work with the employer to help it uphold its responsibilities by suggesting corrective measures. A negative LMO can be issued if a return employer is not willing to undertake and demonstrate the necessary corrective measures requested by Service Canada were carried out.

Changes to Federal Skilled Worker program

In addition to the changes to the LMO process, the Federal Skilled Worker Permanent Resident Program has also been overhauled by Citizenship and Immigration Canada, as a result of consultations with stakeholders and the changing economic conditions.

For applicants who do not have an Arranged Employment Confirmation, do not qualify for one of the streams in the new Canadian Experience Class (CEC — graduate students in Canada or Temporary Foreign Workers) or are not selected by a provincial nominee program (PNP), the road towards perma-

nent residence has become rockier. The new selection criteria hinges upon possessing education and experience in one of the listed occupational categories published in the new Ministerial Instructions, which can be adjusted from time to time. This change was implemented to provide the Canadian government with greater control over the occupational background of would-be permanent residents and accommodate industry sectors where a labour shortage may exist.

Applicants must demonstrate they are qualified and possess at least one year of experience in one of 38 designated occupations in the immediately preceding 10-year period, prior to submitting an application for permanent residence. In practice, the occupations list acts as a filter.

This change does not affect applicants who can apply under the CEC, have Arranged Employment confirmations, or have been selected under PNPs.

Applicants in the Federal Skilled Worker program must still meet assessment criteria such as age, education, work experience, language ability, arranged employment and adaptability factors. Citizenship and Immigration Canada promises shorter processing times for applicants who meet the assessment criteria.



ABOUT THE AUTHOR

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