Temporary Foreign Worker Program and International Mobility Program
Comments on the discussion paper *Regulatory Proposals to enhance the Temporary Foreign Worker Program and International Mobility Program compliance framework*
October 2014

Introduction

The Canadian Council for Refugees is concerned with the human rights of refugees and vulnerable migrants. Temporary Foreign Workers in the "low-skilled" streams (soon to be "low-wage") of the TFWP are workers whose vulnerability and abuse by employers and recruiters has been widely documented. The CCR welcomed the government's recent review of the TFWP and impending changes as an opportunity to address flaws and fill gaps in the program, in order to improve protections for workers' rights.

This discussion paper follows on the heels of the changes to the Temporary Foreign Worker Program announced as an "overhaul" by CIC and ESDC in June 2014. We are pleased to see the government proposing a compliance framework to deter and respond to employer non-compliance with the rules of the Program.

It is encouraging that the framework proposed in the discussion paper resembles that of the Manitoba Employment Standards, since Manitoba's Special Investigations Unit has a record of being proactive at enforcing employer compliance with provincial employment standards and legislation.

Our main concern with the discussion paper is similar to our concern with the changes announced in June: the lack of attention to the impact on migrant workers. We note that in *Overhauling the Temporary Foreign Workers Program: Putting Canadians First*, the interests of migrant workers are never mentioned in the 41-page document.

The CCR emphasizes the importance of reversing the longstanding pattern of policy changes that disregard the impact on migrant workers in the Temporary Foreign Worker Program. While statements of intent around protecting workers are welcome, they are of little value if they are not accompanied by policy measures that in fact lessen the vulnerability and protect the rights of temporary foreign workers.

The compliance framework shows promise, but the federal government must take steps to remedy the fundamental vulnerability of many migrant workers, so that they are not adversely affected by these measures.

Impacts of suspension and revocation of Labour Market Impact Assessment (LMIA)

Suspension and revocation of LMIAs and work permits are central to the proposed compliance framework, and may take place when an employer is being inspected or after they are found to be non-compliant. Because Temporary Foreign Workers' work permits, and therefore their status in Canada are tied exclusively to their employer, if the LMIA or work permit is suspended or

revoked, the workers suddenly find themselves effectively without legal status in Canada, through absolutely no fault of their own. Additionally, workers are often dependent on their employer for housing and even meals, so if their work permit or LMIA is revoked or suspended, they may find themselves without legal status, without an income, without a home, and possibly without food. Workers in this position may not even have enough money to travel home if they want to return, and the sudden loss of income may cause great hardship to the workers and to their families. Although Temporary Foreign Workers are not supposed to be charged recruitment fees, in practice many are: loss of their work permit may therefore leave them in financial debt.

We saw the same unjust impacts on Temporary Foreign Workers in the restaurant business, after the ban was imposed in April 2014 on employers at fast-food restaurants participating in the program.

Punishing workers for the infractions of their employers makes them precarious and vulnerable. It should be remembered that the worst cases of employer exploitation may meet the definition of trafficking in persons: workers in such situations must be treated as victims of a crime, not as people violating immigration laws.

The CCR hopes that the increased inspections announced in June will change the focus to enforcement against the employers. However, we are concerned that the ways in which the rules are enforced may effectively punish workers who are not at fault, when they punish the employer.

Concerns over CBSA Role

The June changes announced that CBSA will be involved in investigating suspected cases of offences by employers under IRPA. This is of concern, as the CBSA has a mandate to deport people without legal status. If LMIAs and work permits are suspended or revoked in response to an employer's violation of the regulations, workers will suddenly find themselves without legal status in Canada, through no fault of their own. There must be a mechanism put in place to protect workers who are rendered undocumented as a result of their employer's infractions, and prevent them from being pursued for deportation by CBSA.

Protecting workers against reprisals

The June overhaul document states that inspections of employers will include interviews with Temporary Foreign Workers with their consent. We are concerned that any determination of an employer's non-compliance may lead to reprisals against the workers, due to suspicions of their involvement in the detection of abuse. Given their vulnerability and the fact that their status in Canada is tied to their employer, this could be highly detrimental to the workers. Effective protections must be put in place for migrant workers who may be victimized by their employers following an inspection.

A specific form of reprisal that could occur is the downloading of any fines imposed onto migrant workers. This concern does not appear unrealistic given that it has been documented repeatedly over the years that fees that are supposed to be paid by the employer are sometimes downloaded to the worker. These fees include (but are not limited to) recruitment fees, Labour

Market Opinion (now LMIA) application fees, and air travel expenses. Specific protections are required to ensure that migrant workers do not end up paying the fines levied on employers.

Laxness with bans

In both *Overhauling the Temporary Foreign Workers Program: Putting Canadians First*, and the Regulatory Amendments and Ministerial Instructions implemented in December 2013, the government stated that employers found to be in non-compliance with the conditions of the program would be banned from participating for at least two years. However, in the discussion paper the majority of offences do not result in banning. Employers can thus violate the conditions, including in ways that cause harm to the worker or that benefit themselves financially, and in many instances still not be banned from the program. While this may not pose a problem for Type A and many Type B violations, it means that following some Type B and many Type C violations migrant workers may be placed in the employment of employers known to have abused their workers, putting them at heightened risk. This is unfair to workers participating in the program. The fact that bans begin only when the employer has accumulated 5 points for Type C violations and 6 points for Type B violations is problematic.

The CCR urges that the government take seriously its obligation to protect migrant workers from abuse and exploitation by ensuring that employers who have abused workers in the past are not authorized to employ Temporary Foreign Workers.

Fines

The broad definition of "small business" allows for businesses with up to 99 employees and $4,999,999 in gross revenues to be fined as little as $500 and $750 for some infractions. It is not likely that such small fines will act as deterrents for businesses at the higher end of this category.

Repaying Workers

Migrant workers who have been victims of wage theft by their employers (being paid less that the amount stipulated in the contract) or who have been charged money in contravention of the regulations or contracts should be reimbursed, and receive damages for harm suffered. There should be a mechanism in place to determine these amounts and coordinate repayment to workers. The discussion paper doesn't include information on what the money collected from administrative monetary penalties will go toward. This money could be committed for reparations to the many migrant workers who have been abused or exploited.

Delays in Implementation

In December 2013, ESDC announced that new regulatory amendments and ministerial instructions were coming into force, augmenting that department's new authority to conduct on-site inspections to verify employer compliance. Yet almost a year later this has still not been done. Many advocates for migrant worker rights are anxious that enforcement be proactive and equitable, so that migrant workers will not suffer for the infractions of their employers.

We have been anxious to see the implementation of the increased inspections of employers. We hope that the compliance framework announcement that one in four employers will be inspected is a sign that action will finally be taken after more than a decade of ballooning numbers of

migrant workers, with no adequate monitoring system. We reiterate the importance of not unfairly targeting workers in these inspections.

Recommendations
The CCR recommends three short and medium-term solutions to the problem of workers being punished for the non-compliance of their employer:

1) Reduce worker vulnerability by:
   - Making work permits sector or province-specific rather than tied to one employer
   - Providing access to permanent residence for all migrant workers

2) Introduce a mechanism to oversee collective and individual protection of workers, particularly in the context of real or potential abuse by employers. For example, the government could set up a Temporary Foreign Worker's Protection Unit to offer support and recourse to migrant workers who are being abused. This unit could be responsible for receiving and investigating complaints from workers, including in the case of reprisals after inspection, and ensuring the fair treatment of employees of an employer that has been banned, or whose LMIA has been revoked.

3) Until these things happen, put in place a contingency plan to support workers who lose their jobs:
   - Provide open work permits to Temporary Foreign Workers whose work permits are suspended or revoked due to inspection or non-compliance of their employer; and
   - Include Temporary Foreign Workers in eligibility criteria for federally funded settlement services, so they can seek support and referral for basic services as well as employment services.

The long-term solution is for the Canadian government to move away from temporary labour migration as a means to fill low-skill labour shortages, and return to the traditional focus on permanent immigration as a means to build a stronger economy and a stronger society.

Conclusion
Canada should move away from temporary labour migration as a means to fill labour shortages. The jobs being filled by temporary foreign workers in the low-skilled streams are not temporary positions, and should not be treated as such. If there are labour shortages in low-skilled occupations, the government should revisit the economic immigration program and look at building into it a low-skill stream, whereby people can come to Canada to work in low-skill jobs and become permanent residents.

Throughout Canada's history, immigrants have started their lives here at the bottom of the ladder and worked their way into essential roles in our society, building businesses, creating culture, founding institutions, becoming political leaders and raising families. Many of us would not be here today if, in the past, immigrants considered "low-skilled" were forced to leave Canada after a few years. Instead of creating a two-tier society, where some workers enjoy fewer rights and are forced to leave after a period, Canada should focus on nation-building, and value people who work in a whole range of jobs. We can only benefit from those contributions if people have a chance to make their permanent home among us, along with their families.