



Comments on proposed regulatory changes: Open work permits for abused migrant workers

The following are the comments of the Canadian Council for Refugees (CCR) on the proposed changes to the Immigration and Refugee Protection Regulations published in the *Canada Gazette, Part I, Volume 152, Number 50*, on December 15, 2018.

Introduction

The Canadian Council for refugees (CCR) is a national non-profit umbrella organization committed to the rights and protection of refugees and other vulnerable migrants in Canada and around the world and to the settlement of immigrants and refugees in Canada. The membership is made up of approximately 200 organizations involved in newcomer settlement and refugee and migrant rights, as well as refugee sponsorship. The Council serves the networking, information-exchange and advocacy needs of its membership.

CCR's work related to Migrant Workers

The CCR has campaigned for the protection of migrant workers' rights in Canada for ten years. The CCR believes that Canada must move away from the increasing reliance on temporary labour migration programs that are fraught with abuse, and return to using permanent immigration as a strategy for meeting labour market demands and nation-building through the inclusion of workers of all skill levels. Over the years the CCR has developed many recommendations to improve the integrity of existing temporary labour migration programs, and has been active in advocating for policy change to protect the rights of migrant workers. One of our latest projects is *Evaluating Migrant Worker Rights in Canada*, a series of report cards evaluating the provincial and federal governments' efforts to protect the rights of migrant workers that was published in 2018. The federal report card recommends (among many other things) extending the open work permit for abused migrant workers and those at risk of abuse across the entire country.¹

Context of the Temporary Foreign Worker Program

The CCR recognizes that bringing racialized workers from countries in the Global South as temporary workers rather than as permanent residents continues a legacy of immigration practices that discriminate along race and class lines. Low-skill and low-wage migrant workers in Canada are racialized. The CCR also recognizes that Canada is complicit, via government foreign policy or private Canadian business interests, in creating economic and social displacement that pushes those in the Global South to participate in Canadian labour migration programs in order to sustain their families.

¹ See CCR, *Evaluating Migrant Worker Rights in Canada* (2018). ccrweb.ca/en/migrant-workers/report-cards

Many of those who are displaced as a result of Canadian resource extraction, and who subsequently participate in labour migration programs in Canada, are Indigenous. This undermines Canada's commitment to reconciliation with Indigenous peoples.

Migrant workers participating in the Temporary Foreign Worker Program (TFWP) are not allowed to bring their families to Canada with them, and are thus separated from their families for long periods of time. This imposed family separation undermines Canada's commitment to families.

The CCR believes that Canada must acknowledge the valuable contribution to the Canadian economy and society made by all migrant workers, by allowing them to immigrate to Canada permanently, should they so choose. The CCR believes immigration should be used for nation-building at the same time as it responds to economic needs, and that workers coming to fill "low-skilled" occupations shouldn't be valued less than those coming to fill "high-skilled" positions. Currently, Canada encourages permanent immigration for highly skilled workers and temporary migration for low-skilled and low-wage workers, despite the continued demand for low-skilled workers in the Canadian economy.

Proposed Changes to the Regulations: open work permits for migrant workers in abusive situations or at risk of abuse

The CCR welcomes the proposal to change the Immigration and Refugee Protection Regulations to allow migrant workers in abusive situations or at risk of abuse to obtain an open work permit so that they may leave the abusive situation and find another employer. This change would effectively extend the worker protection model existing in British Columbia since 2015 to the rest of the country.

In explaining the proposed change, the federal government recognizes that "the power imbalance created by work permits tied to one employer favours the employer and can result in a migrant worker enduring situations of misconduct, abuse or other forms of employer retribution", and that "this is compounded by other factors including language barriers and the costs involved in navigating the complex legal recourse mechanisms available to them". The CCR is pleased to see that a new common understanding is emerging between government, migrant workers and advocacy organizations about the way migrant worker vulnerability is constructed by the structure of the TFWP. This is a promising basis on which to move forward together.

The proposed change does not address the root causes of migrant worker vulnerabilities: open (or sector- or region-specific) work permits are required to truly allow labour mobility so that workers can leave situations of abuse. However, this measure will – as it has done in British Columbia – permit some workers to escape abusive situations, which is a step in the right direction. In particular, the measure may help migrant workers in situations of labour exploitation that do not meet (or are not considered to meet) the threshold of trafficking under Canada's current legislation, leaving exploited workers without access to a Temporary Residence Permit for Victims of Trafficking.

In order for this change to be as effective as possible, it should be accompanied by complementary measures.

Reducing barriers

We welcome the fact that the proposed changes do not require a migrant worker to have the support of a settlement agency in order to apply for the open work permit, nor to submit a complaint to an enforcement

body or human rights commission in advance. The absence of these requirements – which exist under the existing BC worker protection model – is positive, as it reduces barriers and thus makes the process more accessible to migrant workers.

Accessibility

The open work permit for abused migrant workers and migrant workers at risk of abuse must be available to workers in all streams of the Temporary Foreign Worker Program. Workers in the Seasonal Agricultural Workers Program are among the most vulnerable to exploitation and abuse and must not be excluded from this initiative. The open work permit must be accessible to those in the low-wage, high-wage, primary agricultural, caregiver, and Seasonal Agricultural Worker streams of the TFWP.

Awareness-raising

Many workers have difficulty accessing any information related to their work in Canada. There are many barriers – linguistic, technological and bureaucratic – that prevent them from being informed about their labour rights in Canada, their avenues for recourse in the case of unfair treatment, and even the conditions outlined in their own work contracts. Isolation and lack of access to funded support services means that they often have no support whatsoever.

A proactive awareness-raising effort is necessary to ensure that all migrant workers coming to Canada are aware of the open work permit option in case of abuse or risk of abuse. Such awareness-raising would ideally happen pre-arrival or on arrival in Canada, and thus requires extensive coordination that would pair well with awareness-raising about labour rights and access to services (including health services) more broadly. Since employers will not always carry out such information provision, the federal government must take this on as part of its responsibility for managing the Program.

Role of discretion in decision-making

It is promising that training will be provided to migration officers who will be responsible for processing these applications. However, there is little information about how “reasonable grounds to believe a migrant worker is experiencing, or is at risk of experiencing abuse” will be defined, and whether decision-making will be at the discretion of the officer. Experience with the **Temporary Residence Permit (TRP) for victims of human trafficking** shows that discretionary decision-making has led to significant regional variations and underuse of this protection tool.² Procedural gaps in issuing TRPs were recently identified in a federal evaluation³, and the CCR has urged the federal government to address these gaps in order to ensure clear, transparent and consistent application of rules and practices across regions⁴. The CCR is therefore concerned that the discretion to issue the proposed open work permits might be used inconsistently, between regions and between individual officers, and that many workers who have experienced, or are at risk of abuse, will be excluded. The CCR urges that IRCC work with legal and community organizations to develop effective strategies to guide, train and monitor decision-making by officers. We underline that processing guidelines must be sensitive to,

² See CCR, *Temporary Resident Permits: Limits to Protection for Trafficked Persons*, 2013.

ccrweb.ca/en/trafficking/temporary-resident-permit-report.

³ See IRCC, *Evaluation of Temporary Residence Permits*, 2016. www.canada.ca/en/immigration-refugees-citizenship/corporate/reports-statistics/evaluations/temporary-resident-permits-2016.html#itm-4-1

⁴ See CCR *Concerns: Human Trafficking in Canada*, 2018.

ccrweb.ca/sites/ccrweb.ca/files/ccr_trafficking_brief_april_2018_1.pdf

and take seriously, the lived experiences of the workers as related by them, and recognize that physical proof of abuses may often not be available. The CCR recommends that training ensure a trauma-informed and anti-oppressive approach.

The proposed regulations don't specify the length of the open work permits that will be granted to migrant workers in situations of abuse or at risk of abuse. As noted in the background section of the posting in the Canada Gazette, the process of finding a new employer can be lengthy and costly, so an open permit with a short duration is unlikely to achieve the objective of providing the migrant worker with a real alternative to their abusive employer. In addition, in many provinces migrant workers are only eligible for provincial health coverage with a work permit of one year or more. IRCC should have a standard minimum length for work permits of at least one year.

The application and decision-making processes should be streamlined, and decision-making and issuance of the work permit should be timely, as people are in a vulnerable position and without income if they have already left the job where they were being abused.

Support services

Lack of access to support services exacerbates migrant workers' vulnerability. IRCC funds most settlement services offered across Canada but excludes migrant workers from these services. In many parts of the country, the only groups providing support to migrant workers are grassroots, volunteer-run groups with little to no budget. In order to address the vulnerability of potentially abused migrant workers, and to provide support for those seeking to leave an abusive work environment, the government should extend eligibility for settlement services to migrant workers, and ensure that services are adapted to the needs of these workers, as well as funding grassroots organizations.

The Migrant Worker Support Network in British Columbia is a promising new initiative.⁵ It should be extended to the rest of the country, so that migrant workers in all provinces may benefit from support services.

Conclusion

The current Canadian economic immigration system discriminates by level of education and training, and thus also along the lines of race and class. The result is not only discriminatory, but means that the country's low-skilled labour needs are not met by the immigration program. In the medium term, Canada should revise its economic immigration program to include workers of all skill levels.

In the short term, the proposed regulatory changes are a positive measure that can help protect some migrant workers. Especially promising is the government's acknowledgement of problems with the TFWP that place migrant workers at risk of abuse. This common understanding provides a basis for future collaboration on efforts to make labour markets and immigration in Canada more equitable.

⁵ 2018 Federal Budget announced funding for a 2-year pilot to establish a network of Migrant Worker Support Organizations for migrant workers while working in Canada. The pilot is managed by Employment and Social Development Canada, and run in British Columbia.

