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s.16;s.13

Interim instructions received from IRCC NHQ - Operational Management and Coordination July 28, 2016

Please note in addition to the British Colombia Workers at Risk process which we discussed, Employment and Social Development Canada (ESDC) is responsible for the Protection of Temporary Foreign workers, foreign workers who require an LMIA in order to obtain a work permit. From the brief details that were given at the meeting, we believe the workers in Surrey may have an LMIA. TFWs who have concerns or information are encouraged to call the ESDC tip line at 1-866-602-9448 or use the Online Fraud Reporting Tool.

If the individuals in question are LMIA exempt they may also wish to refer to the instructions regarding victims of human trafficking. Additionally provincial governments may report issues to IRCC's investigations mailbox: CIC.CMB-IMP-Investigations-RDC-PMI-Enquetes.CIC@cic.gc.ca. Other reporting mechanisms include calling the Border watch line or the IRCC Call Centre.

Please note these are interim instructions for this particular situation. Final instructions on New Work Permits for Temporary foreign Worker at Risk: British Colombia process will be published once the details have been finalized.

Requested information:

- An IRCC operational contact in BC?

- ✓ Contact for outside partners (Govt. of BC, non-profits) to answer questions and guide clients through the process

Govt. of BC- Leanne Hodaly Supervisor, Inland Processing Unit
IRCC Vancouver
604-699-0632

- Estimate of how long it would take to process a new work permit?

- ✓ First contact with the client will be made within a week and a decision will follow in a timely manner. Officers may require additional information or an interview in order to make a decision, which can add time to processing.

We can commit to processing the work permit applications from TFWs at risk as a priority.

- Details of how the provincial service provider would provide the information to IRCC (electronically? By mail? To whom?)

- ✓ By mail

Attention: Inland Processing Unit
IPU Supervisor
1148 Hornby street, Vancouver BC V6Z 2C3

- Whether it is possible to waive the application and privilege fees?

- ✓ Officers have the delegated authority to waive fees, and will make that decision when clients request an exemption from the requirement to pay for the application to be processed.
- Any other procedural matters we should know about or iron out (e.g. if there is a specific format to the info/documentation that the service provider would send)?
- ✓ an approved settlement service provider has prepared a written recommendation in regard to the foreign national, which will include:
 - a brief summary of the case;
 - a copy of the official complaint form filed with the enforcement agency(s) (e.g., Police or CBSA report, a copy of the self-help kit process or official complaint completed by the FW and submitted to the Employment Standards Branch in B.C.);
 - an indication of which provincial and/or federal law(s) have not or appear to have not been complied with;
 - additional documentation/evidence substantiating the complaint, as required;
 - a description of the risk faced by the **foreign worker**; and
 - contact information for the **foreign worker**.

Please note an inbox for these specific enquiries will be set up for non-profits and the information we will require in order to process the request. It will be monitored daily.

Assisting Vulnerable Foreign Workers A Step-by-Step Guide for Settlement Agencies

This guide is intended for settlement agencies funded by B.C.

Introduction

Immigration, Refugees and Citizenship Canada (IRCC) and British Columbia have put a measure in place to issue a new temporary work permit to foreign workers who face risks of abuse as a result of an employer not complying with applicable federal or provincial laws.

The objective of the new temporary work permit is to offer protection to the worker by regularizing their status in Canada, and providing them with the authorization to seek other employment, where appropriate.

This measure is available to all foreign nationals in B.C. who hold an employer-specific work permit, and foreign nationals who are authorized to work without a work permit as per the *Immigration and Refugee Protection Act and Regulations*.

The definition of abuse within this context and examples of employer non-compliance with federal or provincial laws are provided at the end of this guide.

STEP 1: Foreign Worker connects with a Local Settlement Service Provider

- The foreign worker who faces risk of abuse may contact a provincially funded settlement service provider for assistance. In some cases, the foreign worker may be referred by an enforcement agency such as the Canada Border Service Agency, the Royal Canadian Mounted Police, WorkSafeBC or the Employment Standards Branch.
- The foreign worker should bring along any relevant documents they may have regarding their employment situation.
 - Examples of documents include: current work permit, pay stubs, any communication from the employer (letter(s), email(s), handwritten note(s), text(s), photos of work environment, police report etc.
- A settlement worker will meet with the foreign worker to discuss their case and review documentation. The settlement worker will explain the process of making an official complaint and the application for a new temporary work permit with Immigration, Refugees and Citizenship Canada (IRCC). Note that a formal complaint must precede an application for a new temporary work permit.
- In addition, the settlement worker will connect the foreign worker to any other services and supports (if eligible).

- If the foreign worker has applied to the BC Provincial Nominee Program, the settlement worker will also advise the foreign worker to contact pnpinfo@gov.bc.ca to inform the PNP office of their employment situation. The PNP may ask for the contact information of the settlement worker who is assisting with the complaint and work permit application.

STEP 2: File a Complaint

- The settlement worker will help the foreign worker file a complaint against the employer with an applicable enforcement agency (for example, the RCMP, the Employment Standards Branch <http://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/complaint-process>, the Human Rights Tribunal <http://www.bchrt.bc.ca/process/complaint/file.htm>, or Employment and Social Development Canada regarding abuse or misuse of the Temporary Foreign Worker program <http://www.servicecanada.gc.ca/eng/about/integrity/tfwp/reporting.shtml>). The complaint must be made in writing and include any documents which may help with the investigation. There is no charge for filing a complaint.
- When filing a complaint, the foreign worker may in some cases request anonymity or obtain an exemption from serving the employer.

STEP 3: Apply for a New Temporary Work Permit

- Upon receipt of a complaint, the enforcement agency may start an investigation or attempt to resolve the complaint but the application for a new temporary work permit may proceed prior to the enforcement agency making a final determination of employer non-compliance with provincial or federal laws.
- A settlement agency will assist in putting together an application package for a new temporary work permit and provide a written recommendation to IRCC.
- The application package to IRCC should include the following:
 - A brief summary of the case;
 - An indication of which provincial and/or federal law(s) have not or appear to have not been complied with;
 - A description of the risk(s) faced by the foreign worker;
 - Impact statement provided by the foreign worker (e.g. financial hardship, impact on family etc.)
 - A copy of the written complaint, any documentation/evidence substantiating the complaint and the reference number provided by the enforcement agency;
 - Contact information for the foreign worker and the settlement worker assisting in the case;
 - A completed Use of Representative form
 - <http://www.cic.gc.ca/english/information/applications/representative.asp>

- Any additional documentation that may support the application for a new work permit (including for example, an offer of employment from a new employer).
- Applications should be mailed to:
Immigration, Refugees and Citizenship Canada
Att: Leanne Hodaly, IPU supervisor
1148 Hornby street
Vancouver, BC
V6Z 2C3
Enquiries: vantfw@cic.gc.ca
- IRCC will give priority to the processing of these temporary work permit applications. Additional information including an interview may be required by IRCC.
- IRCC has the sole authority to determine the circumstances for issuing work permits to foreign workers, and whether the issuance of a new work permit is warranted.
- In the case where the foreign worker has found another employer, an employer-specific work permit may be issued by IRCC. In other cases, an open work permit may be issued.

STEP 4: Obtain new employment and if applicable update temporary resident permit or any permanent resident application

- The settlement worker may assist the foreign worker in a job search if the worker must leave their original place of employment which placed them at risk.
- Once a new work permit is issued, the foreign worker may begin working for a new employer.
- The foreign worker should be made aware of any other immigration requirements in relation to their temporary residency.
- If the foreign worker has been nominated by the BC Provincial Nominee Program (PNP), or if their BC PNP application is pending, the worker should contact pninfo@gov.bc.ca again and provide an update on their current employment situation. The BC PNP will provide any further instructions regarding what additional information must be provided to maintain the nomination or to continue with the application.

STEP 5: Follow up on the Complaint Process

- The settlement worker may offer support to the foreign worker to participate in the inspection or prosecution of an alleged employer or employment agency for non-compliance in Canada.

Definition of FWs at “risk of abuse”

For the purposes of this process, “risk of abuse” is defined within the meaning of R72 (7) (a) of the Immigration and Refugee Protection Regulations and is as follows:

- (a) Abuse consists of any of the following
 - (i) Physical abuse, including assault and forcible confinement
 - (ii) Sexual abuse, including sexual contact without consent
 - (iii) Psychological abuse, including threats and intimidation, and
 - (iv) Financial abuse, including fraud and extortion.

Potential employer non-compliance with applicable federal or provincial laws pertaining to the treatment of the FWs resulting in serious risk to a FW.

- Examples of potential employer non-compliance with the *Immigration and Refugee Protection Act and Regulations* may include, but are not limited to, the following:
 - Potential non-compliance whereby the employer has failed to comply with the conditions of the Temporary Foreign Worker Program or the International Mobility Program (e.g. failing to provide a workplace that is free of abuse within the meaning of paragraph 72.1(7)(a) of the IRPR) at the serious detriment of the FW;
 - Potential employer non-compliance with the IRPA (e.g. A118(1) Offence-trafficking in persons) which is putting the FW at risk of abuse within the meaning of paragraph 72.1(7)(a) of the IRPR).
- Examples of potential employer non-compliance with applicable provincial laws may include, but are not limited to, the following:
 - Potential employer non compliance with the Employment Standards Act by charging job placement and recruitment fees and/or by repeatedly not paying the wages owed to the FW.
 - Potential employer violation of the Occupation Health and Safety Regulations whereby the employer is failing to provide safe work environment which creates undue hazards to the health and safety of the FW and/or fails to correct unsafe working conditions at the detriment of the FW.

New Work Permits for Temporary Foreign Workers at Risk: British Columbia Process

Summary notes from the meeting on September 22, 2016

Attendees:

Leanne Hodaly, IRCC
Aireen Luney, JTST
Vicki Chiu, JTST
Khim Tan, Options Community Services Society
Birgit Manninen, Kitimat Child Development Centre
Winnie Lee and Todd Kitzler, ICA of Greater Victoria
Neeru Gupta and Sharon Pannu, IMSS of Prince George
Katie Stevenson, Dawson Creek Literacy Society
Olivet Carullo, Kelowna Community Resources
Sherman Chan, MOSAIC
Pam Gliatis, Capilano University

Purpose of Meeting:

To gather feedback on the new process from select SPOs and discuss implementation

Clarifications from IRCC:

- These applications will be given priority
- Will try to schedule an in-person or phone interview within 7 days and aim for a decision in 14 days, provided that the submitted application and information is complete
- This new work permit is normally for 6 months
- The application for a new work permit does not have to wait for the outcome of investigations to a complaint but the application should include as much detail on the complaint as possible; a chronological narrative of events will be helpful; other information on the impact on family and financial situation will also be helpful

Clarifications from PNP:

- More instructions will be given to advise settlement agencies on when and how to notify the PNP Office in the case of an at-risk foreign worker who has applied for PN; suggesting that the client should notify PNP as soon as they seek assistance from the settlement agency and again when they get a decision from IRCC
- Need for the settlement agency to provide PNP with a contact person who can represent the client during the process

Key issues/concerns raised by SPOs:

- This process presents a resource issue as gathering the right support documents and making a recommendation is a time-consuming process for the settlement worker; some of these clients need intensive support
- A test case involving an Employment Standards violation took 40 hours of settlement service; a 60-page submission was compiled; plus additional support from a community champion
- Particular issue in small communities where there is usually only one settlement worker
- Training on the implementation of this process is required for settlement agencies; more clarity on what supporting documents are appropriate and necessary; may also include training on filing a complaint with ESB
- Concern over the unknown caseload once this process is rolled out broadly; other foreign workers may be waiting to file pending the outcome of the first case
- SPOs has to walk a fine line when they assist foreign workers alleging abuse as they would like to maintain good relationships with local employers at the same time
- Want to clarify if IRCC would waive fees for these cases

Considerations for the Ministry:

- Look for any learning from Alberta
- Determine how to advertise this new BC process in light of limited resources
- Consider training for SPOs
- Consider appropriate resourcing/funding for SPOs

1. Khim Tan khim.tan@options.bc.ca
2. Baljit Sethi , Sharon Pannu, and Neeru Gupta
3. Katie Stevenson Settlement Services Coordinator & Essential Skills Instructor Dawson Creek Literacy Society
4. Olivet Carullo, the Settlement Worker for Temporary Foreign Workers, Kelowna Community Resources
5. Sherman Chan schan@mosaicbc.com
6. Pam Gliatis pgliatis@capilano.ca
7. Winnie Lee wlee@icavictoria.org
8. Birgit Manninen bmenninen@kitimatcdc.ca
- 9.

Leanne Hodaly

Supervisor, Immigration

Western Region | Région de l'Ouest

Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada

1148 Hornby Street Vancouver BC V6Z 2C3 | 1148, rue Hornby Vancouver C.-B. V6Z 2C3

Aireen Luney, Manager, Program Development & Promotion

TEMPORARY FOREIGN WORKERS

Each year, employers in B.C. hire temporary foreign residents from countries around the world. These temporary foreign residents help B.C. meet the demand for short-term labour and keep projects moving forward. Temporary foreign residents have the opportunity to gain valuable Canadian work experience that can help them move to permanent residency.

If you would like to come and work in B.C., visit the Immigration, Refugees and Citizenship Canada website to find out about the options available to you. An online tool is available on the Immigration, Refugees and Citizenship Canada website that can help you to determine if you are eligible to come to Canada as an immigrant, temporary resident or visitor.

- Immigration, Refugees and Citizenship Canada: Come to Canada tool

If you want to come to B.C. temporarily to work, you will likely need to get a work permit.

- Find out if you need a work permit

In some situations you can get a work permit even if you do not have a job offer. These work permits are called “open” work permits.

- Find out more about open work permits

If you can't get an open work permit, you will need to have a job offer from an employer. In most cases, before hiring a foreign worker an employer must get a Labour Market Impact Assessment to show that there are no Canadian workers available to fill a job.

- Find out if you need a Labour Market Impact Assessment

In addition to a work permit, you may need a visitor visa in order to enter Canada.

- Find out if you need a visitor visa

If you are working temporarily in B.C., your spouse or common-law partner and your dependents can apply to come with you. If they wish, they can also apply for a study or work permit.

- Information on spousal work permits

Once you are working in B.C., you are protected by the same laws as other local residents. If you feel unsafe or at risk of abuse at work, you can report the issue to an appropriate enforcement agency (e.g. the police, Employment Standards Branch etc.) or seek information and assistance from a settlement service provider.

Find out about the settlement services and supports that are available to temporary foreign residents throughout B.C.

FOR TEMPORARY RESIDENTS

Settlement services and supports are available to temporary foreign residents throughout B.C. Fifty-six service providers across the province deliver these services with funding provided by the Province of British Columbia. A service provider can help you understand your rights and help you adjust to life in B.C. The types of services available may include:

- one-on-one information and referral
- workshops and support groups
- peer support and mentoring
- form filling in relation to immigration and work permit processes

Please contact your local service provider if you have any questions or would like to access settlement services. You can also call the WorkBC and WelcomeBC Contact Centre at 1-877-952-6914 to find out who your local service provider is and how to contact them.