



Why Canada's Immigration Policy is Unfair to Temporary Foreign Workers

Author: **Delphine Nakache**

The federal government has long permitted migrant workers into the country on a temporary basis in order to fill short term gaps in specific sectors of the labour market. The two most important examples are seasonal agricultural workers and live-in caregivers, both of whom fill temporary labour shortages for specific employers. The number of these migrants has not changed much, but the government also permits the entry of temporary workers through what is called the Temporary Foreign Worker Program.

This program was originally targeted at specific shortages in higher skilled areas such as academia, business executives, and engineers, but has since 2002 been used to fill jobs in lower skilled

occupations that require no more than a high school diploma. Legislative changes have permitted the entry of these migrants to be driven by employer demand, with the result that the number of temporary foreign workers in the country has gone from approximately 100,000 to over 280,000 in a six year period.

However, many of these workers are temporary only in name, since they are used to fill long-term and even permanent vacancies. What's more, despite the ongoing need for temporary foreign workers in both "skilled" and "lower-skilled" occupations, only skilled workers have been given a clear opportunity to get permanent residency from within. In contrast, lower-skilled workers, with few exceptions, have ▶



Canada's stated objective, which is to recruit temporary foreign workers to fill low or unskilled jobs for several years and then to show them the way out, should be the subject of a public discussion (...). It is not clear how such an objective actually addresses current and future skills and labour market

very limited opportunity to migrate permanently. In a recent study called "***The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail over Human Rights Concerns?***" Delphine Nakache, of the University of Ottawa, and Paula J. Kinoshita of the Quantz Law Group, assess the trade-off between the short term economic gains of this program and its long term consequences, and find implementation fall short of promoting both the rights of migrants and the long term interests of Canadians.

Temporary foreign workers are tied to one job, one employer, and one location. This restrictive work permit shifts the bargaining power in the employer-employee relationship clearly toward the employer with the result that these migrants may lack the basic employment protections that Canadians have come to expect as a right.

The authors of the report, which was published by the Institute for Research on Public Policy, argue that when combined with miscommunication between federal and provincial departments responsible for the design and enforcement of temporary foreign workers' rights, this restrictive employment contract raises the potential for human rights abuses. It also opens the door for illegal recruitment practices and misinformation about migration opportunities.

Temporary foreign workers wishing to renew their work permit or change its conditions must apply to Citizenship and Immigration Canada. The restrictions in doing this, and the delays in the process, imply the right of these workers to change employers is in reality rather limited. These restrictions also limit the ability of other government departments, those charged with the enforcement of employment standards, to protect these workers from potential exploitation.

Ultimately this restrictive employment contract is inefficient as it prevents workers from moving to another location or employer when there are changes in labour demand. The major policy recommendation made by Nakache and Kinoshita is that the employer specific work permit be replaced by a sector- or province-specific permit.

The authors also make other recommendations. They document the failings in the complaint-based process used to enforce provincial labour standards by contrasting the experience in Alberta with that in Manitoba. The Alberta example shows that there is essentially no federal or provincial enforcement of contractual rights. For example, employers are legally obliged to pay the return transportation to a migrant's country of origin, but this seldom happens. On the other hand, Manitoba requires employers to register with the province before they can hire temporary workers, and this opens the door to workplace monitoring and the imposition of penalties should there be a noncompliance with the law.

While the federal government stipulates that it is illegal for those recruitment agencies promising employment in Canada to charge workers fees, enforcement lies with the provinces. In Alberta, the practice of charging fees to workers continues despite rules prohibiting such practices.

Finally, the report notes that in spite of the stated goal of the program being to meet short term and temporary labour market shortages, temporary foreign workers have the right to apply for permanent residence. But the reality is that this is more likely to be the case for highly skilled workers than lower skilled workers, that it is not evenly applied across the country, and that it can imply significant periods in which families are separated.

The lower skilled are treated differently than those with higher skills: public policy is at best indifferent to their integration and longer term success. For example, the spouses of highly skilled workers are able to acquire open work permits, which allow them to move freely in the labour market. Highly skilled workers have the opportunity to access permanent residency through both the provincial and the federal immigration streams.

In contrast, the spouses of lower skilled workers must secure a position in Canada and apply for a restricted work permit. Lower skilled workers, with few exceptions, have a very limited opportunity to migrate permanently, and yet they can renew their temporary status for four years so long as they have employment. This implies that family members may be separated from each other for long periods of time.

Nakache and Kinoshita argue that the short-term focus of Canada's temporary labour migration policy will not help the country achieve its long-term needs, and is unfair to the vast majority of temporary foreign workers who are expected to spend years in Canada without contributing to the society in the long run.

For this reason the authors recommend that the work permit be restructured to allow these workers greater mobility, and that stronger enforcement mechanisms be used to protect them from abusive practices. But more importantly, they recommend that incoherence between different levels of government be reduced, and that policies be adopted to support migrants' integration and long-term settlement. ■



Delphine Nakache is an Assistant Professor with the School of International Development and Global Studies at the University of Ottawa. She teaches in the areas of public international law and migration and refugee law, and is currently conducting several research projects on the protection of temporary foreign workers and their immigration opportunities, as well as on the detention of asylum seekers in Canada.

She can be reached via email at Delphine.Nakache@uottawa.ca. The full article is available online via available online via the Institute for Research on Public Policy at <http://www.irpp.org>.

Delphine Nakache and Paula J. Kinoshita (2010). "The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail over Human Rights Concerns?". Montreal: Institute for Research on Public Policy Study, No. 5. 47 pages.