

April 27, 2021

Standing Committee on Citizenship and Immigration
Committees and Legislative Services Directorate
House of Commons
131 Queen Street, 6th Floor
Ottawa, Ontario
K1P 5C7

Atten: Meghan Cook

Dear Ms. Cook

RE: Standing Committee on Labour Market Impact Assessment (“LMIA”) under the Temporary Foreign Workers Program

I want to thank the Standing Committee for inviting me to share my knowledge on the issue of LMIAs and foreign workers. I am writing to summarize the points I made during my appearance as well as elaborate on a second point that I did not have sufficient time to discuss.

The two points pertain to:

1. Abuse of the LMIA process by consultants and employers.
2. The challenges foreign workers, who are injured at work in Canada, face in returning to work.

1. Abuse of LMIA Process

On a regular basis my office receives phone calls from foreign workers who have been charged illegal and extravagant fees to obtain an LMIA. We hear recurrent stories of foreign nationals who have paid tens of thousands of dollars, averaging around \$40-50,000.00 upwards to an employer and/or consultant. These monies are paid in cash making it difficult if not impossible to prove they were received.

The abuse does not end there, after paying these monies some individuals are still being charged for the monthly employer remittances or made to work long hours to cover these remittances. Some are told there is no work, and they end up being compelled, out of desperation, into a fraudulent scheme whereby the employer remittances are made but no actual work is done. The immigrant gets caught in a web of deceit by unscrupulous persons taking advantage of a system that places a lot of power and control in their hands.

Foreign workers taken advantage of in this manner are reluctant to report the matter for fear of being deported from Canada or fear for their own lives and safety. We have had clients that have received death threats. For those that choose to take action, the recourse or remedies are limited, for instance, they could complain to the ICCRC, if the matter involves a consultant, however, unfortunately, there is not much teeth in terms of enforcement abilities of this agency. If a consultant is disciplined and their license is taken away, we have heard that such consultants continue their scheming under a different banner.

I appreciate the efforts of this government in having the CBSA investigate and arrest unscrupulous employers and consultants. I am aware, in BC, of criminal proceedings being taken against some employers and consultants and I am hopeful that criminal consequences will act as a deterrent.

However, I recommend that a process be created to take away the power that these consultants and employers wield in the first place. A solution suggested to me by a local non-profit organization, Hope Welfare Society, is an employer-employee matching process, utilising the EDSC or WorkBC (or whatever the equivalent is in other provinces) to match workers, already in Canada looking for work, with genuine employers in need of workers. We heard, for example, during the Standing Committee hearing that the agricultural industry is in desperate need of workers. No doubt there are other industries lacking workers, and our suggestion is to consider hiring workers or foreign nationals that are already in Canada and have the skills to do the work. Create a data base where these workers are selected and by-pass the clutches of unscrupulous employers and consultants.

It would also be helpful to create public awareness in countries from which large numbers of foreign nationals are known to come from. Educate people before they arrive in Canada that they cannot be charged for an LMIA and educate them about the difference between Lawyers and consultants, the former having undergone extensive training and education and who are governed by a regulatory body that has enforcement abilities.

I submit that these proactive measures would assist in curbing exploitation by consultants and employers and would perhaps even reduce the need for, costly, and time-consuming investigations by the CBSA and the further time and costs involved in criminal proceedings.

2. Injured Workers.

The second scenario pertains to foreign workers who have been injured while working with a Canadian employer. These workers end up in the workers compensation process where they receive help to return to work. If they are not able to return to their pre-injury employer, due to permanent functional impairments, they must find another employer. Being disabled, it is hard for them to find an employer willing to go through the efforts of obtaining and LMIA.

Injured workers are not eligible for the Vulnerable Worker Open Work Permit because their inability to work is not related to abuse at the workplace. However, it is not uncommon for workers to experience harassment at the workplace after their injury, during return-to-work efforts. However, if that is not the case, then the worker is left with limited recourse to secure a work permit. They could try a TRP, if they fall out of status, and ask for an Open Work Permit through that process, and/or simultaneously make an H & C application, however these processes are time consuming and can, in the current pandemic, take well over a year to process.

I recommend that injured workers, who are not able to return to their pre-injury employer due to their work injury, should be issued an expedited Open Work Permit to allow them the ability to find work elsewhere once they are able to. It is also important to note that being in a workers compensation scheme, in order to receive vocational rehabilitation assistance a worker is required to cooperate with return-to-work efforts, which means looking for work and trying out work opportunities. Clearly, the worker will need to be on a work permit to do this. Accordingly, an expedited Open Work Permit is essential for these workers. If they are, completely, disabled to returning to any form of work, then they should be supported in an expedited H & C application.

Summary

I have offered two proposals for vulnerable foreign nationals who are facing hurdles in the LMIA process. I thank you for the opportunity to make these submissions.

In closing, I would also like to express my gratitude for other work this government has given me the opportunity to collaborate on, specifically, the expedited TRP process for victims of violence. I believe collaboration is essential to improving the lives of vulnerable people. I am hopeful, my suggestions in this letter will likewise prove useful in assisting foreign workers in securing LMIAS.

Should you have any questions or require any clarification please do not hesitate to contact me.

Sincerely

Kamaljit K. Lehal

Kamaljit K. Lehal
Barrister & Solicitor