

MIGRANT WORKERS IN CANADA

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Canada is known for its immigration program and for the some 200,000 permanent residents which it brings to Canada each year. However, Canada also draws on migrant workers in a number of areas - some explicit and others less explicit. In general, persons coming to Canada as permanent residents enjoy most of the rights of Canadians. However, rights are put at risk once any foreigner is accused of criminal activity of any kind. Migrant workers have rights relating to authorized temporary work.

As recently as March 2000, Canada was party to a declaration of "Principles" at the fifth Regional Conference on Migration - otherwise known as the Puebla Process. The Puebla Process includes governments of Canada, US Mexico, with Central American and some Caribbean and Latin American governments who declared in the Spanish text available: "We re-affirm our respect for the dignity of all migrants. In this sense, we condemn and will work to eliminate violations of human rights of migrants and refugees whatever their migratory situation and we will endeavor to fulfil relevant international agreements and standards. We will continue to combat anti-migrant attitudes and also discrimination and discriminatory abuses of migrants and their families." Yet there is no knowledge of this among the Canadian public and little evidence of this "principle" in the law and practice affecting refugees and migrants in Canada. The Inter-American Commission on Human Rights made available its findings about human rights and the Canadian refugee system in November 1999 and adopted its Report February 2000. Thus several "international agreements and standards" are known. So far, there is little evidence Canada has any interest in applying them.

Determining the numbers of migrant workers in Canada is problematic. The Strategic Planning Division of Citizenship and Immigration Canada, CIC, has reported numbers to SOPEMI in December 1999, but these do not match earlier figures. An article produced for the Conference "Migration, Human Rights and Economic Integration", York University, November 1992 by a researcher at the Demography Division, Statistics Canada, reported the number of "visa workers" between 1981 and 1990. The number of visa workers had risen from some 50,000 annually in 1981 to some 250,000 annually in 1990. If this trend continued, even taking refugees into account, there were 200-300,000 "visa workers" in 1999. The "visa workers" appear to correspond with "migrant workers" under the definition of the Migrant Worker Convention. They represent the sum of arrangements whereby foreigners in Canada without permanent resident status are authorized to work. However, adding the CIC figures for Foreign Workers, business and refugee claimants gives a total closer to

100,000.

It is clear that the Foreign Worker program engages most migrant workers when taken together with its variations for NAFTA and GATS - discussed below. In addition others remain in Canada working without formal authorization. They will include persons who arrived as visitors. Some will have required visas which may or may not have expired. Many will not have required visas. Whether the government is fully aware of these numbers is not certain. Given current border document scanning technologies and tax reporting, at least partial statistics are feasible, but they are not public.

The comments on the various migrant worker programs below are for the most part very preliminary. They draw on limited discussions with few government and union officials. Canadian Filipino community service organizations know much more about the caregiver program which is presented in summary only in this article.

Foreign workers

Foreign workers as they are called fall under a program is described on the Web Site of Citizenship and Immigration Canada (CIC) (<http://www.cicnet.ci.gc.ca/>). According to CIC, the vast majority of some 80,000 foreign workers each year come from the US. Any Canadian employer can decide to offer limited-term employment to someone who is neither a Canadian citizen nor permanent resident.

After the employer has made the job offer to the foreign worker, the employer will contact the Human Resources Canada Centre (HRCC). HRCC will work with the employer to examine the job offer, ensure that conditions offered are acceptable, and consider whether the job might easily be filled from within the domestic workforce. The job description must be "genuine" and not designed to make the job inaccessible to Canadian citizens. If satisfied, HRCC sends a "validation" to the CIC for an "employment authorization".

HRDC considers requests for foreign workers as they relate to opportunities that will be created for Canadian workers, for skills transfers and other training opportunities, and for the net economic benefit and growth that will result. HRDC can also consider whether the firm is relying on foreign workers unduly. If HRDC concludes that a firm's plans will result in a net economic benefit to Canada, it can validate, as a block, job offers for which the employer intends to use foreign workers. This validation will be set out in a written agreement between HRDC and the employer.

There can be situations where a number of employers in an industrial sector, face the same skills shortage due to growth in that sector, demographic factors, or the introduction of a new technology. In cases where there are a small number of large employers dominating a sector, this situation might best be addressed by a series of firm-specific agreements or a multi-firm agreement. There may, however, be other cases where the affected sector is dominated by many small firms, where

due to the number of firms or the lack of administrative capacity within those firms, the process of putting in place firm-specific agreements would be impractical. In this case, the response might be agreements with key employers and/or other suitable representatives who can speak on behalf of the entire sector.

Sectoral representatives will typically initiate the process by approaching HRDC to seek consideration under an agreement. An agreement could address a sector on a national basis, but it could just as easily be limited to a specific geographic region where limited mobility within an occupational labour market makes such limitation appropriate.

Foreign Workers enjoy certain work related rights which stem from a work authorization - such as unemployment insurance and provincial health care coverage. However, they are otherwise considered as visitors with respect to rights. Thus, if work ceases and the work authorization or visitor visa (if required) expires, so may work-related rights like healthcare. Persons under this program may be tolerated in Canada because of limited capacity to track and deport. They may remain in a vulnerable situation in the underground economy.

There is provision to promote family unity for selected groups of migrant workers. In September 30, 1998, CIC and HRDC announced a pilot project declared to help Canada gain a competitive advantage in attracting highly skilled foreign workers for temporary assignments. Under this pilot project, spouses accompanying temporary foreign workers coming to Canada for jobs in certain high-skill occupations in key high-growth sectors of the economy were allowed to work. This project was open to foreign workers in high-skill occupations who are admitted to Canada for at least six months. This initiative was aimed to make Canada a more attractive choice for highly trained individuals, and for companies who wish to invest and create jobs in a dynamic and competitive business environment." Remember, most of these are from the US.

Some Variations on the Foreign Worker Program

In response to shortages in the software CIC and HRDC with the Software Human Resource Council began a pilot project to streamline the entry of those workers whose skills are in high demand in the software. If an HRDC office determines that there are no Canadian citizens or permanent residents available to fill the position, the job offer to the foreign worker is validated and the worker may then apply for an employment authorization for admission to Canada.

Persons may work in Canada under several reciprocal multinational or binational trade agreements. The General Agreement on Trade and Services (GATS) permits temporary entry of a worker in designated service sectors from a GATS member country into Canada without going through the job validation process and without the need to obtain a foreign worker record. Each GATS member nation has made similar commitments regarding access to its domestic market in agreed-upon service sectors.

The North American Free Trade Agreement eases the temporary entry requirements for "business persons" who are citizens of the United States or Mexico and who are involved in the trade of goods or services or in investment activities. NAFTA removes the need for the validation of an offer of employment for all business persons covered by the Agreement. In the case of a business visitor, NAFTA removes the need for an employment authorization; and for professionals and intra-company transferees, NAFTA expedites the application process and permits the issuance of an employment authorization at the port of entry. Note that business persons do not need a work authorization - presumably their company may invoice for a service. Technically, they are not migrant workers.

The Canada-Chile free trade agreement is modeled on NAFTA. It includes measures to facilitate the temporary entry of selected business persons, by removing the labour market assessment to which most foreign workers are subject.

Live in Caregiver Program

The Live-in Caregiver Program is a distinct program which can be viewed as a special variation on the Foreign Worker theme whose objective is to bring workers to Canada to do live-in work as caregivers when there are not enough Canadians to fill the available positions. A live-in caregiver is someone who provides care to children, the elderly or the disabled in a private household. Successful applicants receive an employment authorization allowing them to work in Canada, but only as live-in caregivers. After two years of employment, which must be completed within three years of the caregiver's arrival in Canada, program participants can apply in Canada to become permanent residents provided they meet certain requirements.

Critics of the program note that it is really a form of immigration being handled in discriminatory manner. Critics suggest that it is not included within normal independent immigration because the nature of the work is considered lower status than other workforce need areas and because those performing caregiver needs are predominantly women. It is believed to draw heavily on Filipino and Caribbean Women. It is also believed to frequently draw on persons who are well qualified in their home countries as, for example, nurses. The nature of the program invites exploitation. It ties a worker to a single work place situation at least for the duration of the program. The test to be met for permanent residence in Canada after the program is vague. All this makes it difficult for exploitation to be reported. "Exploitation" includes limited and irregular opportunities for leisure and recreation, assignment to chores beyond those agreed to or reasonably expected with respect to childcare or senior care, and may include more serious forms of harassment and abuse.

Seasonal Agricultural Workers

This program is viewed as distinct by the government, but can also be

viewed is a special variant on the above Foreign Workers program. Migrant workers from seven designated countries are allowed to come for seasonal agricultural crop picking on the basis of standing agreements with the governments of these countries. In order to make these agreements with specific governments and hence with specific nationalities, Canada had to make reservations on world trading agreements like GATS. According to union spokespersons, by far the largest program is with agricultural employers in Ontario and is under an agreement with Mexico.

On the face of it, the Memorandum of Agreement with Mexico is fair. Migrant workers are to expect the same pay and work conditions as Ontario workers. Yet there are moral dilemmas. On the one hand, there is little doubt that the program offers work and money to some desperately poor people from Mexico who travel in and out directly by air to do this work. At the same time, even preliminary discussions reveal that there are at least pockets of sub-standard conditions.

Ontario is one of only two Provinces in Canada where agricultural workers do not fall under normal provisions of labour legislation. For example, they lack minimum wage, workplace safety and rights to form or participate in unions. A working tri-partite arrangement in Ontario involving agricultural employers, government and unions was discontinued after the defeat of the Rae government around 1995. Also, these migrant workers face special arrangements for meals, shelter and health care. There is provision in the agreement for a representative of the Mexican government to check on the situation. Yet this and other visits to check on the situation have been inadequate according to accounts passed on to ICCR and CAWG. An inspector can easily be misled by seeing only part of a mixed range of situations which can co-exist on the same farm. While some workers may be well housed and well fed, others can face over-crowded and unsanitary housing arrangements by Canadian standards. There are reports of inadequate access or no access to normal health care services. Also, the work-related right to leisure and recreation is not enjoyed. Rather, under harsh working conditions, separated from their families, isolated physically on farms and isolated by language from local Canadian communities, there can be considerable mental stress. Given the people benefit from these programs and are eager to return for another season of work, there are ethical and practical difficulties in documenting conditions.

Refused Refugee Claimants

As in many other economies, some refused refugee claimants provide a pool of tolerated but vulnerable persons who may continue to work under ongoing or discreetly renewed work authorizations or who may continue to work without authorization. Some 50% of refugee claimants will receive refugee status but about 80% will remain in Canada in one way or another after several years of uncertainty. The 30% of refugee claimants who were refused but remain can be viewed as a refugee population in the sense of the UNHCR "Mandate". However, the population would also qualify as migrant workers according to the text of the Migrant Worker

Convention since they have worked in Canada and since Canada has determined them not to be "refugees".

Serious problems can arise with respect to health care and these problems are more serious for families with children. A related problem for families with children is to ensure children receive education. The government has declared a greater interest in following up and expelling this population than the general population of Foreign Workers who overstay on a visit. However, given the limited budget capacity to deport, only part of the population of refused refugee claimants can be deported. The threat of expulsion over those who remain serves to produce a vulnerable workforce willing to work for lower wages in unsafe workplaces. ICCR is aware of an isolated instance in which immigration officials were told by third parties about a refugee claimant working without a work authorization. There were no sanctions against the employer. Happily, there were no serious consequences for the refugee who was waiting for the usual employment authorization.

Unlike the United States, Canada has not developed a system of sanctions against employers of persons without valid work authorizations. There is a policy question about whether workplace sanctions should be required. The Migrant Worker Convention suggests migrants' rights come first and only alongside these rights can measures against trafficking in migrants be invoked. These latter measures might include a system of inspections of workplace safety and working conditions. That would require further reflection and church policy development.

The difference in numbers between the earlier Statistics Canada research paper and CIC statistics is puzzling. CIC argues that it has been "negotiating" definitions with Statistics Canada and that numbers were always more modest than the 250,000 annually previously reported by Statistics Canada for visa workers in 1990. However, the annual numbers of persons given work authorizations each year in some categories are known or have been estimated: the refugee backlog in 1988-89 was about 100,000; annual refugee claimants about 20,000; annual students and caregivers about 5,000; and annual seasonal agricultural workers about 10,000. The duration of temporary work varies, but however one plays with definitions, it is difficult to see how the number of "migrant workers" would be so significantly affected. My extrapolation for 1999 of 200-300,000 migrant workers per annum cannot be far from the mark.

Conclusion

As the Statistics Canada researcher concluded in 1991 visa workers, migrant workers in one form or another, are a significant new factor in the economic life of Canada. As new trade and service agreements arise, the role of migrant workers and business visitors can only become greater. The scale of temporary worker programs overshadows economic immigration programs. Yet there has been little or no provision to ensure the rights of these migrant workers. All changes in the Immigration Act since 1980 have increased the discretion of officials and have reduced the

legal safeguards for protecting any international rights at issue. The Migrant Worker Convention thus appears a timely instrument for establishing rights for foreigners working in Canada.