Mar 29th, 2:30 PM - 3:50 PM

Boosting our Economy: How the Temporary Work Visa Program increases Migration, but decreases Human Rights

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Temporarily Restoring the Economy?

A Look at the Temporary Foreign Work Program Today

Alexandria S. Palazzo

March 29, 2016
Roadmap

1. Introduction – What is the TFWP?

2. Legislative Background

3. Analysis: Addressing the TFWP Shortcomings

4. Our US Counterpart

5. The Future of TFWP: Recommendations

6. Conclusion
Introduction – What is the TFWP?

• Managed by Human Resources and Skills Development Canada ("HRSDC") and Canadian Immigration and Citizenship ("CIC") of the Federal Government

• Allows Canadian employers to hire migrant workers to fill temporary labour shortages
• In theory: immigrants are admitted into Canada as parties to an “ongoing and open-ended social contract” with their employers.

• In practice, however: foreign workers are admitted temporarily to do jobs that are socially undesirable by Canadians due to wages and/or working conditions.

• They have limited access to public benefits while in Canada.
Legislative Background

• Non-Immigrant Employment Authorization Program ("NIEAP") introduced on January 1, 1973

• Became formally known as the TFWP in the 1990s

  – Polarizing Trend: Low-skill vs. High-skill Job Markets affecting TFWP
  – Low-Skilled Worker Pilot Project
TFWP Shortfalls

Weaknesses of the TWFP include:

1. The Employment “Contract”

1. Provincial Employment Standards

1. Recruitment Agencies

1. Union Representation
1. The Employment Contract

• Model contract set out by HRSDC

• Cannot be enforced by Federal Government

• Only Provincial law applies

• No regulatory body ensuring enforcement
  – *CSWU Local 1611 v. SELI Canada Inc.*
2. Provincial Employment Standards

• Discrepancies across provinces

• Provincial governments are not as resourceful or staffed as the Federal government

• Temporary foreign workers are not entitled to social assistance anywhere in Canada
3. Recruitment Agencies

• Notorious for using coercive methods to lure TFWs to work in Canada
  – Sometimes use incorrect documents

• Worker Recruitment and Protection Act

• Bill C-57
4. Union Access

• Due to temporary nature, it is hard to foster collective action among workers/members

• Presence of the TFWP attempts to make employers more union-proof

• In Ontario and Alberta, TFWs do not have collective bargaining rights
  – *Fraser v. Ontario (Attorney General)*
Our U.S. Counterpart: H2 Program

- U.S. employs similar bifurcated temporary worker visa program that targets high-skilled and low-skilled workers separately

- H1 Program: reserved for high-skilled TFWs in specialized fields
  - TFWs afforded great protection

- H2 Program: low-skilled TFWs
  - Split into H2-A and H2-B programs
  - Agricultural and other intermittent workers
Future Recommendations

1. Federal government to enact an umbrella organization to displace TFWP
   a. Pursuant to s. 91(25) of the Canadian Constitution Act of 1867
      a. Paramountcy Doctrine

1. Or, ensure all provinces are abiding by the same regulations to avoid discrepancies
   a. Not up to the courts
   b. See s. 95 of the Canadian Constitution Act of 1867
Conclusion

• It is of timely fashion that the TFWP be reviewed

• Trudeau’s majority government: how will he change Canada’s political landscape and affect immigration policy during his term?

• Questions?