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

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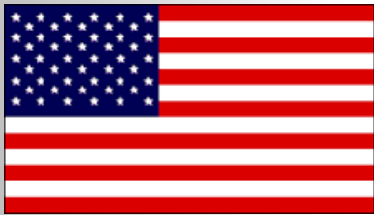
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Temporarily Restoring the Economy?

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 TFWP 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?