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December 17, 2018

Dear Mr Cashaback,

Re: Canada Gazette, Part I, Volume 152, Number 50: Regulations Amending the Immigration and Refugee Protection Regulations

The Migrant Workers Alliance for Change (MWAC), Canada's largest migrant worker rights coalition, welcomes the initiative to create Open Work Permits for migrant workers at risk. This proposed regulatory change is line with recommendations made by us and our allies on December 18, 2017, titled "Expanding Worker Rights - Open Work Permit Program for Migrant Workers Facing Risk", and are welcomed.

The creation of this stream indicates a continued increase in awareness in the federal government that employer-specific / tied permits necessarily create the conditions for risk and abuse. MWAC continues to reiterate as part of the broader migrant justice movement that all low-waged, racialized worker currently in the Temporary Foreign Worker Program, should be able to come to Canada with permanent residency status and their families.

While these proposed regulatory changes are a step in the right direction, questions and concerns remain that I am outlining here. We have some specific proposals to strengthen the open permits regime to ensure that they actually serve the interests of workers as intended.

First, what the regulation does well:

1. It is positive that the open permit will be issued even if a worker has not filed a complaint. In many cases, workers require the ability to leave a situation of actual or possible danger or abuse prior to making a complaint. Thus, we support the provision to issue permits without a complaint.

2. It is positive that the standard of proof that we had proposed, that is “reasonable grounds to believe” that a foreign national in Canada is experiencing or is at risk of experiencing abuse in the context of their employment in Canada has been accepted.

However, the regulations require strengthening. Our proposals are as follows:

1. It is deeply concerning that the regulations does not define “abuse” and “risk of abuse”. This is dangerous because it leaves it up to the discretion of the person deciding the application. It could be defined very narrowly. For example, the impact statement includes “detrimental health and safety conditions” as abuse, but this is not in the regulation.
    - Any potential violation of federal or provincial laws including labour, employment, human rights, terms of the contract, recruitment protections, health and safety, workplace safety etc should be considered risk and grounds for issuance of open permits. It is critical that these protections extend to abuse where policy protections currently do not exist unifromly - such as protections from recruiter abuse.

2. In the same vein of increased discretion, no appeal process is available. The only choice would be for a worker to apply for judicial review at the Federal Court of Canada. This is not an appeal, but a request to consider the outcome of the application from a legal standpoint - rather than assessing the individual application on the basis of its merits. This is a lengthy, expensive and largely inaccessible avenue as the Federal Court rarely grants leave (that is, permission to the applicant to present their case). We propose a fast and accessible appeal process when applications are denied. One model would provide for a “reconsideration” by a different decision maker who would speak with the worker, with interpretation if required, to explain why the application was denied and provide an opportunity to respond.

3. Further, the regulations state that work permits “may be issued” if there is abuse or risk of abuse. This must be amended to read that workers permits “**shall** be issued”. Once abuse has been ascertained, there is no justifiable reason to not issue a permit and therefore keep workers in harm’s way.

4. The regulations says nothing about the length of the permit. This is an oversight and must be corrected, we propose a minimum one year permit. This is the low-end of time it takes for a workplace injury or employment standards claim to be processed. Minimum permit lengths must be clearly stated in the regulations.

5. It is concerning that the open work permit would not be renewable. The Impact Analysis Statement states that if it expires, the worker would need to get a new permit “through the normal process”. The normal process requires a Labour Market Impact Assessment for most workers, which is extremely difficult for workers to access without using expensive and often

abusive recruiter agencies.. Employers are known to blacklist workers that speak out, and no normal process would be available. Speaking out, and then getting a non-renewable permit therefore has a significant economic impact for workers who are already in debt to come work in Canada.

6. The regulations are a one-size-fit-all mechanism. This does not take into account the specific structures of the Temporary Foreign Worker Program. For example, migrants in the Live-In Caregiver Program (Care Workers) must complete 24 months of service within 48 months as one of the pre-conditions to apply for permanent residency. The regulations are silent on whether work on these open work permits will count towards the service requirement. Without this clarification, many Care Workers will likely not access this program. Similarly workers in the Seasonal Agricultural Workers Program face blacklisting. Without a guarantee of employment in the future, or access to Permanent Residency, many workers will not access this program.

7. There is no specific provision or supports outlined if the worker is deemed not be at risk of abuse or facing abuse. This is a significant gap. Even if the concerns faced by the worker do not meet the standard outlined, it is likely that there are concerns at work to take such a drastic step. As such, we request that unsuccessful applicants be directed to contact the relevant authorities (Ministry of Labour for example), as well as be connected with a support organization that can review their concerns.

8. For the Open Work permit protections to be an effective support system for workers, migrant workers must be made aware of it. As such, we reiterate our call for multilingual, and comprehensive communication strategy so that workers are made aware of this program.

9. It is essential that workers themselves be able to apply for these permits, without assistance. As such a simpler, streamlined application process that is available in multiple languages and does not require sustained access to the internet or familiarity with forms must be developed.

10. Abuse and risk of abuse are time-sensitive situations. Workers often face coercive removal strategies (for example, the employer drives them to the airport and hands them a ticket) when speaking out. As such, these work permits must be expedited. We propose a 48 hour turnaround time.

11. While an open work permit providers greater labour mobility, migrant workers' access to health services is tied to their continued employment. For example, in Ontario, when migrant workers change employers, they must complete a new three-month waiting period to access medicare. Also migrant workers do not have access to provincial social benefits in between employment. As such, we reiterate the need for Interim Federal Healthcare provision through a Temporary Resident Permit - Type 86 along with the open work permit.

12. The regulations do not create specific avenues for investigation of the employer once a permit is granted. Particularly, they are silent on partnering with provincial agencies who are the competent and regulatory lead on much of the abuse that worker face. This limits the ability of workers to access remedies such as return of unpaid wages. Neither do the regulations bar the use of Canada Border Services Agency (CBSA), who usually partner with Employment and Social Development Canada (ESDC) on investigations, but principally target workers over employers. As such as propose, that investigations where possible be done by provincial authorities without the use of CBSA or policing powers.

Thank you for your continued to work to increase migrant worker rights. As the difficulty in developing these regulations show, temporary immigration streams fundamentally limit justice and dignity. The creation of this program should be an interim step towards creating permanent immigration streams for low-waged workers.

Please contact Syed Hussan at hussan@migrantworkersalliance.org / 1-855-567-4722 ext. 700 for follow up questions.

Sincerely,

Syed Hussan
Coordinator, Migrant Workers Alliance for Change

The Migrant Workers Alliance for Change includes individuals as well as Alliance for South Asian Aids Prevention, Asian Community Aids Services, Butterfly (Asian and Migrant Sex Workers Support), Caregiver Connections Education and Support Organization, Caregivers Action Centre, Durham Region Migrant Solidarity Network, FCJ Refugee House, Fuerza Puwersa, GABRIELA Ontario, IAVGO Community Legal Clinic, Income Security Advocacy Centre, Justice for Migrant Workers, Migrante Ontario, No One Is Illegal – Toronto, Northumberland Community Legal Centre, OCASI – Ontario Council of Agencies Serving Immigrants, OHIP For All, PCLS Community Legal Clinic, SALCO Community Legal Clinic, Students Against Migrant Exploitation, Social Planning Toronto, UFCW, UNIFOR, Workers Action Centre and Workers United.