

Citizenship and Immigration Canada - Public Consultation (Submission 2)

From: L'Association pour la Défense des Droits du Personnel Domestique/ Association for the Rights of Household Workers

- **How many newcomers should we welcome to Canada in 2017 and beyond?**
- **How can we best support newcomers to ensure they become successful members of our communities?**
- **Do we have the balance right among the immigration programs or streams? If not, what priorities should form the foundation of Canada's immigration planning?**

The foundation of immigration planning should not be primarily based on the number of newcomers welcomed, rather it must be focused on how the immigrants are treated. The Association for the Rights of Household Workers is concerned with the conditions immigrant workers face, and how the Canadian laws are designed in such a way that allows for abuse and rights violations to take place. Therefore, it is of utmost importance that the current system be changed in order to protect all immigrant workers, newcomers as well as those already working here under restrictive and abusive work permits.

Our first recommendation (others to be listed under questions to follow) is the recognition of the fundamental right to change employers. In 2006, the Supreme Court of Israel unanimously reached the conclusion that employer-tied work permit systems do not satisfy human dignity. The right to liberty, for its part, is violated. Any worker that is tied to his/her employer becomes their serf... and that the restrictive arrangement has created a modern form of slavery. It is fundamental that every worker, including temporary foreign workers, be able to change employers and have open work permits. Without this freedom, they are subject to severe abuse, exploitation, and human rights violations. In order to become successful members of society, newcomers and current working immigrants (under temporary foreign work programs or otherwise) must be given the same fundamental human dignities and freedoms as those given to Canadians.

In similar fashion, the Federal government currently imposes (in particular through the exclusion from newcomer integration programs) on temporary foreign workers formal debt to the employer/placement agent (i.e. SAWP workers debt to the employer for the transportation and immigration fees) and/or informal debt to the employer/placement agent. Such policies have been compared to slavery-like regimes by the Supreme Court of the United States in 1905: "What is peonage? It may be defined as a status or condition of compulsory service, based upon the indebtedness of the peon to the master. The basal fact is indebtedness. As said by Judge Benedict, delivering the opinion in *Jaramillo v. Romero*, 1N.Max. 190, 194: One fact existed universally; all were indebted to their masters. This was the cord by which they seemed bound to their masters' service. Upon this is based a condition of compulsory service. Peonage is sometimes classified as voluntary or involuntary, but this implies simply a difference in the mode of origin, but none in the character of the servitude. The one exists where the debtor

voluntarily contracts to enter the service of his creditor. The other is forced upon the debtor by some provision of law. But peonage, however created, is compulsory service, involuntary servitude.”

Evidently, the Canadian system that allows for migrant workers to be indebted to their employer is an example of peonage which should be eliminated. Therefore, we also recommend that the Federal government abolish the systems such as LMIA – in particular \$1,000 fee has been placed on Labour Market Impact Assessment (LMIA) applications that employers are downloading to workers. Migrant workers shouldn't have to pay to work.

These are the sorts of priorities that the Federal government should be concerned with primarily when looking at immigration planning. Immigrants must have the security that their fundamental rights will be respected.

- **What should Canada do to ensure its immigration system is modern and efficient?**

The previous recommendations were also clearly examples of how Canada's immigration system is not modern. In order for the system to be considered modern and efficient, Canada's migrant workers programs must also include the recognition for the fundamental right to family unity. Without this, families are forced to be separated, and the migrant workers are then placed in the vulnerable position of having to tolerate abuse and exploitation in order to be reunited with their families. Examples of this include not speaking out against their employers for contract violations and even basic human rights violations in fear that they will not be allowed to be reunited with their families in Canada, or be given the opportunity to visit them in their home countries. Therefore, mechanisms must be developed to allow migrant workers' families to travel with them to Canada and be provided with open work permits, as is the case with other 'high skill' workers. Additionally, employers must be mandated to provide paid vacation including return airfare to migrant workers (as is the norm in the Middle East, Hong Kong and other regions). This would not only ensure the psychological and human dignity every migrant worker (as a human being) requires, but would also mean they would no longer have to tolerate horrible working conditions by not having to fear speaking out against their abusive employers/placement agencies.

- **In what ways can Canada be a model to the world on refugees, migration and immigration?**

Seeing as the issues inadequate treatment of/ abuse towards refugees, migration and immigration is a pressing one around the globe, Canada should seek to be a model for the rest of world. In order to do this, Canada must set the example where all newcomers, including temporary foreign workers, are treated with dignity and respect for their rights. On top of everything mentioned in the previous sections, another essential way to do this is to recognize the fundamental right to social inclusion/citizenship. Without this right, employers retain the ability to deport/repatriate any worker, meaning the worker has no security or protection against their employer from being forced to leave Canada and potentially being blacklisted from ever returning through the program. Indeed, employers' 'worker repatriation privilege' state practices

and policies have been found by courts incompatible with the respect of individuals' fundamental right to liberty in various contexts. In particular, in the landmark 1772 Somerset decision, the English Court of King's Bench concluded that the enforcement of such privilege would result in the legalization of slavery. In the same vein, historical evidence confirms that government's privilege to deny to legal workers the preservation of their right to earn a living and the access to citizenship systematically result in the consolidation of slavery-like regimes. Combined with the inability to change employers as mentioned earlier, migrant workers are by all intents and purposes trapped, unable to do anything about whatever unfortunate situation they might be placed in.

The Federal government must address these issues first if Canada wants to be seen as a role model. We recommend that the government ensure coverage of all (im)migrant workers admitted under temporary work authorization under federal-funded newcomer integration and support programs by giving them access to permanent legal status upon arrival, and access to permanent resident status (associated with public services and access to citizenship), allowing re-entry in Canada.

Additionally, it should be made illegal for private agencies and the government to repatriate/deport (im)migrant workers based on medical grounds.

Canada should also end the four-year limit on work permits (8-month limit for SAWP workers): Rather than value their contributions, current policy forces migrant workers to leave after four years. This uproots long-term workers who have built lives and relationships here and helped build local businesses.

By giving (im)migrant workers access to permanent legal status, their fundamental rights will be respected and protected, meaning that Canada's immigration planning will be more modern (moving away from slavery-type regimes), more efficient, and a model for the rest of the world to follow.