

**Joint Submission to the Standing Committee on Human Resources, Social  
Development and the Status of Persons with Disabilities**

by

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Submitted: 6 September 2006

## Executive Summary

The FCJ Refugee Centre, KAIROS, the National Alliance of Philippine Women in Canada, and the United Food and Commercial Workers Canada make the following proposals to improve employability of undocumented and temporary workers:

1. The Canadian immigration system should prioritize access to permanent immigration over temporary worker programs. If there is an identified labour shortage, then workers should be allowed to enter Canada with landed status in the same way skilled workers are allowed entry. In the alternative, if temporary workers are used to fill labour shortages, they should have full access to enforcement mechanisms and opportunities to apply for permanent residency in Canada.
2. Implement a regularization program that would allow a moratorium on deportations of non-status workers who have come forward to have their status regularized, at least until the case has been reviewed. Any regularization program should necessarily include security screening required for any permanent resident applicants as required under the *IRPA*.
3. Provide a transparent, impartial appeal process and dispute resolution mechanism that is available to workers before making any decision to repatriate or deport.
4. The contradiction between the federal migration selection criteria and provincial jurisdiction on professions, occupations and trade recognitions must be addressed, by increasing the employability of any person, based on qualifications, skills and experience, regardless of immigration status.
5. The implementation of a fair and transparent national model for the recognition and/or assessment of international credentials, skills, and/or experiences.
6. Remove mobility restrictions that will allow temporary workers to live in accommodation of their choice in Canada, eliminate requirements of temporary workers to live on the employer's property, and allow workers to change employers.
7. Temporary workers should be allowed to bring their immediate families.
8. Resources must be provided to grassroots communities that are directly in advocacy and support services for these workers.
9. Consult with workers about terms and conditions of their employment in Canada.
10. Create a review mechanism to ensure that foreign temporary worker programs are not being used to respond to labour shortages that are the result of poor and illegal working conditions as opposed to reviewing how working conditions and wages can be improved in certain sectors.

## **I. Introduction**

In June 2006, the National Migrant Justice Gathering brought together over one hundred migrants and migrant justice advocates from academia, faith groups, the labour movement and the wider justice-seeking community to lay the foundations of a national migrant justice network in Canada. During a two day conference held at York University, participants shared experiences, identified common concerns and expressed their commitment to working together on public education and policy initiatives which would advance the rights and welfare of undocumented workers, seasonal agricultural workers, live-in caregivers, and other foreign temporary workers.

The National Migrant Justice Gathering was a joint initiative of KAIROS: Canadian Ecumenical Justice Initiatives, the National Alliance of Philippine Women in Canada, the STATUS Campaign and UFCW Canada. An expanded steering committee now provides leadership for an emerging national migrant justice network that allows participants to continue to consult and collaborate with each other as they seek to bring their concerns before decision makers. Members of the Migrant Justice Steering Committee developed this submission.

The Standing Committee's mandate is to look at employability issues in Canada, including workers mobility and seasonal workers. It is these latter two issues on which our submission will be focussed. In particular, we raise issues concerning seasonal agricultural workers, live-in caregivers, and undocumented workers. Our submissions are summarized as follows:

1. We wish to highlight that barriers to employability in Canada for these workers are tied to their status as temporary or illegal.
2. These precarious and largely racialized migrant workers and non-status people are vulnerable to various forms of exploitation and regularly face abuses of their rights and dignity.
3. Restricting labour market mobility of these workers aggravates workers' vulnerability and enforcement of labour and human rights and ensures that they are politically

impotent.

4. These workers fill labour shortages in the Canadian market. There is a need to examine why there are labour shortages in certain industries (ie. Canadians will not endure the poor and difficult working conditions as opposed to a shortage of low skilled workers in Canada), and the effect of creating a class of temporary and non-status workers to fill this labour shortage (ie. working conditions remain depressed in these industries because these workers are unable to enforce their rights).
5. Employability in certain industries means accepting precarious status, poor working conditions and exploitation. Workers who are not prepared to accept these conditions face barriers to employability in Canada because they could be repatriated or deported.
6. It is in the context of the experiences of these workers that we have concerns about the rationale of the Low Skilled Workers Pilot Project, which serves to bring in temporary workers in certain industries rather than examine the working conditions in these industries and make employment available for workers with permanent status.
7. All migrant workers regardless of their legal status deserve just wages, fair treatment from their employers, and full and equitable entitlement and access to the health, social, educational, and legal services and supports available to all Canadians. It must be recognized that they are providing valuable services within Canada's labour market by taking care of our children and the elderly as well as harvesting crops for domestic consumption and international trade.

The following submission will illustrate these issues of employability by describing the predicament of Mexican and Caribbean seasonal agricultural workers, live-in caregivers, and non-status workers. That is, workers who do not accept poor working conditions have little prospects of employability in Canada because enforcing their rights means risking termination of employment and deportation.

## **II. The Caribbean and Mexican Seasonal Agricultural Workers Program**

The Caribbean and Mexican Seasonal Agricultural Workers Program (SAWP) was established in 1966 to bring in temporary foreign workers to fill a labour shortage in agriculture. Even during periods of high unemployment in Canada, growers historically have been unable to recruit or retain workers during critical harvest periods because of the extremely difficult working conditions and low wages. Instead of requiring growers to improve the working conditions in order to attract domestic labour, the Canadian government acceded to the demands of growers to allow for the importation of foreign temporary labour. There are approximately 18,000 Mexican and Caribbean agricultural workers coming annually into Canada.

Key features of the SAWP which ensures that workers are unable to enforce local labour laws and to mobilize for improvements in working conditions are as follows:

1. Lack of mobility in Canada's labour market. SAWP workers enter into Canada under a temporary worker permit which requires them to only work in agriculture and to be employed by one named employer. In addition, the worker is required to live on his or her employer's property.
2. SAWP workers pay premiums into the Canadian unemployment insurance scheme despite having no possibility of receiving unemployment insurance benefits or retraining.
3. Unlike other employee-employer relationships, the migrant worker has no input into the contractual arrangement in which he or she is entering. A standard Employment Agreement has been created on their behalf in order to avoid exploitation of migrant workers. However, there is no effective enforcement mechanism to ensure compliance.
4. SAWP workers do not have the right to collectively bargain in Ontario and Alberta because these jurisdictions deny agricultural workers to have these rights in contrast to workers in other low-skilled industries.
5. A number of workers have been returning to Canada on a seasonal basis for several years, working anywhere from 4-8 months of the year in Canada for up to 20 years. Despite the significant labour market participation and social attachments these workers have created in Canada, their years of labour in Canada are not recognized as it relates

to mobility or citizenship rights in Canada.

6. Barriers to citizenship places migrant workers in a position of social and political disadvantage. Migrant workers cannot vote for Canadian politicians who may campaign for improvements in wages and working conditions, or otherwise influence Canadian authorities to address concerns relating to their employment. Thus, migrant workers are limited in their effective participation in the political process.

All SAWP workers are subject to vague language in their Employment Agreement that allows employers the right to repatriate workers without further compensation for “non-compliance, refusal to work, or any other sufficient reason”. This provision allows the employer to arbitrarily remove workers from their property with no formal right of appeal. The implication of the premature repatriation provisions significantly undermine the migrant workers’ ability to enforce any rights they may have and forces them to endure illegal working conditions.

The workers’ vulnerability is compounded by the fact that as non-citizens they have no rights of mobility while in Canada. The worker may legally stay in Canada until the expiry of the work permit, regardless of the employer's decision to rescind the contract. However, if the employer triggers these provisions, the practical effect is that the worker is also immediately removed from the grower's property requiring costs for alternative accommodation to be incurred at the same time as employment income has ceased.

Moreover, the worker is prohibited from working for another employer unless the consulate is able to find another farm for the worker. If a transfer placement is not available, there is some urgency to send the worker home in order to avoid any additional costs for room and board. It is extremely difficult, as the grower knows, for the worker to claim damages for breach of contract in these circumstances. This raises the question of whether these workers are provided equal treatment of Canadian workers when the *effect* of the repatriation provisions makes it difficult to enforce their rights.

### **III. The Live-In Caregiver Program (LCP) - “From cradle to grave and from stroller to wheelchair”**

Having been seriously sick and bedridden for a long time, Leila Elumbra has been ordered by Citizenship and Immigration Canada (CIC) to leave the country. A Filipino domestic worker who came to Canada over two years ago under the Live-in Caregiver Program (LCP), Elumbra has not been able to meet the requirements to apply for permanent residence - 24 months of live in work within 36 months. Elumbra became sick after working for 22 months – just 2 months shy of the LCP requirement.

The case of Elumbra shows how the LCP puts women under this program in a very vulnerable and precarious situation. Having temporary immigrant status and being subject to immediate deportation upon non-completion of the contract, these women have practically no rights as workers and as women in this country, despite the contributions that they make while working.

The Live-in Caregiver Program (LCP) is a government program that was developed and implemented in 1992. The LCP brings mainly women from the South into Canada to perform work in 4 major areas: child care; care of the elderly; care of people with disabilities; and housekeeping and other household chores. In 2005, according to statistics from the Canadian embassy in Manila, Filipino women made up 95.6% of domestic workers in Canada. We believe that the LCP privatizes the public demand for universal child care and other health care needs of Canadians.

The LCP has three fundamental pillars:

1. Mandatory live-in requirement which makes it illegal for a live-in caregiver to live outside the home of her/his employer during the course of the contract.
2. Temporary immigration status for 24 months within a three year period making them vulnerable to immediate deportation upon non-completion within this period.
3. Work permits which ties the worker to a single employer making them vulnerable to abuse and arbitrary demands by their employer.

The economic, political, and social impacts of the LCP on these women and their families are detailed below which in turn impact on their employability in Canada. The economic impacts are:

1. Being tied to a single employer at minimum wage, virtually legislates these women into poverty. Because of lack of economic opportunity and poverty, some of these women have become victims of prostitution and sex-trafficking.
2. After completing the program, many of these women continue to be stuck in low-paying “dead-end” jobs having been de-skilled and their past education and training not recognized. This results in downward economic mobility as they find it difficult to move up to other good paying jobs outside the LCP.
3. Non-accreditation and recognition of education and training despite the relatively high level of education and having practiced their profession in the Philippines and other countries.
4. Women who are compelled to continue working as domestic workers lose their skills and their professional knowledge over time.

The political impacts are:

1. Because of their precarious status as temporary workers they are unable to participate in the political affairs of society. This disempowers them and increases social inequality.
2. The program creates a pool of people (mostly women) whose rights are easily violated both in the workplace and society at large because of their temporary status. Without Canadian citizenship, they do not have rights and privileges due to them as contributors to the Canadian economy.
3. There is delay or denial of immigrant or resident status which could lead to deportation due to bureaucratic hurdles.
4. Because they cannot vote, advocacy on their behalf is not recognized or given enough attention in political debates. LCP hardly enters discussions on universal daycare and health care, although it is obvious that the LCP, and the women under it, are being used

to address these two issues.

5. These women lack the necessary legal aid and support when they encounter problems because of their temporary status and as non-immigrants.

The social impacts are:

1. Their non-immigrant status deepens their experience of systemic racism and discrimination because they are not considered members of the imagined Canadian community and they are made to feel that way. This undermines their successful integration and settlement in Canada.
2. Their status under the LCP discourages them from complaining of poor working conditions because they fear that this may negatively impact their application for residency and citizenship.
3. They continue to suffer long family separation because they cannot bring their families under the program. Our study shows that separation, on average, lasts between 5 to 8 years. These women are virtual strangers to their families once they reunite either in the Philippines or in Canada.
4. Many are punished by immediate deportation even for minor non-compliance such as failure to make the 24 month live-in within 3 years or living outside the home even with permission of the employer.

#### **IV. Undocumented Workers**

People living without status in Canada are the victims of the unfairness, inequities and restrictions found within our refugee and immigration system. People find themselves without status in Canada for a variety of reasons, but most relate to their status as oppressed people on the basis of their race, gender, social status, economic status, age, and/or variation from gender or sexual norms.

The following describes persons who are forced to live without status in Canada:

1. Survivors of human trafficking or torture or rape, stateless persons, persons with serious

medical conditions.

2. Persons from moratorium countries who decide to stay in Canada even though they have been refused refugee status because of flaws in the refugee and immigration system.
3. Persons who come to Canada for family reunification purposes and realize that it is almost impossible to obtain status within Canada, particularly if they fall under the category of “extended family”.
4. Women and their children who came to Canada under family sponsorship but leave their spouse due to domestic violence.
5. Persons who work for some time under temporary/seasonal worker permits and decide to live in Canada permanently, and/or persons who have lived and integrated (including social, cultural and familial integration) in Canada for several years, but are unable to regularize themselves while in Canada.

It is not possible to talk about employability, or how to facilitate employability, for people living without status in Canada when they formally lack the right to work. People living without status in Canada are denied many of their fundamental rights, notably access to health, education, and protection from discrimination and, of course, the right to work. Lacking the right to work, they become vulnerable to many forms of abuse and discrimination because the legal system often does not protect or recognize them.

Should persons without status become regularized within Canada, their employability is negatively effected because there is no fair and transparent process for the recognition or evaluation of international skills and credentials.

## **V. Conclusion and Recommendations**

General provisions of the *Immigration and Refugee Protection Act (“IRPA”)* and *Regulations* requires HRSDC to provide a labour market opinion on the effect of bringing in temporary workers by considering following factors:

1. Is the work likely to result in direct job creation or job retention for Canadian citizens or permanent residents?
2. Is the work likely to result in the creation of transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents?
3. Is the work likely to fill a labour shortage?
4. Will the wages and working conditions offered be sufficient to attract Canadian citizens or permanent residents to, and retain them in, that work?
5. Has the employer made or agreed to make, reasonable efforts to hire or train Canadian citizens or permanent residents?
6. Will the employment of the foreign national be likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute?<sup>1</sup>

HRSDC is obligated under *IRPA* to review whether the wage rates and working conditions offered to temporary workers are wages and working conditions that would attract Canadians. Arguably, the current wage rates and working conditions in some sectors are not sufficient to attract Canadians, thereby necessitating temporary foreign workers and undocumented workers to fill these jobs. This is why programs such as the Low Skilled Pilot Project were created. There is no shortage of low-skilled Canadian workers, but rather, the shortage is qualitative in that even unemployed Canadians refuse to work at low paying jobs in unsafe and poor working conditions. The policy choice is to allow the importation of migrant workers who would accept current conditions. The notion that labour shortages in Canada can be resolved with temporary workers from poor countries also carries the historical legacy of stereotyping certain workers based on race, national origin, or ethnicity as being more tolerant of poor working conditions than Canadian workers.

It is not possible to talk about employability without talking about equality. Equality means having full access to mechanisms that allow seasonal and non-status workers to enforce their rights without repercussions such as losing employment or deportation. We make the following

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<sup>1</sup> s. 203(3) of the *Regulations*.

proposals to improve employability of undocumented and temporary workers:

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