

JANUARY 2021

MIGRATION AND PRECARITY: FROM THE TEMPORARY FOREIGN WORKER PROGRAM TO UNDOCUMENTED STATUS

POLICY BRIEF

Funding Acknowledgement:
Social Sciences and Humanities
Research Council of Canada
Insight Grant

University of Alberta Kule
Institute



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Policy Context

The number of temporary foreign workers (TFWs) in Canada surged for two decades prior to 2014, at which time Canada introduced immigration reforms aimed at curtailing their economic participation. These reforms included restricting the stay of TFWs in Canada to a maximum of 4 years at a time (the '4-in and 4-out rule'), capping the employment of TFWs at 10% of an employer's workforce by 2016, toughening criteria for obtaining a Labour Market Impact Assessment (LMIA), limiting the validity of work permits for low-wage TFWs to a maximum of one year, and reducing access to permanent residency for TFWs (Elgersma, 2014; McKie, 2014). These reforms resulted in the work visas of 70,000 TFWs expiring on April 1, 2015. While some TFWs left Canada upon expiration of their work visas, others transitioned to permanent resident (PR), international student, or undocumented status. Since May 2020, Immigration, Refugees, and Citizenship Canada (IRCC) has enacted three policy shifts intended to support TFWs: TFWs may now work while they are waiting for IRCC to assess work applications if they want to change jobs; some undocumented workers may now apply to restore status; and some visitors may apply for a work permit without having to leave Canada. These policies will support many TFWs and mitigate some of the failings of the Temporary Foreign Worker Program (TFWP). However, they do not go far enough to address some critical needs of TFWs, particularly those of individuals who transitioned to undocumented migrant status.

From September 2017 to December 2019, we engaged TFWs and relevant service providers in qualitative interviews, focus groups, conversation cafés, and a cross-sectional survey (n = 284). In total, we interviewed 38 participants who entered Canada as TFWs and 11 service providers who offered various supports to TFWs. Eleven of the TFWs in our sample were undocumented. We found the TFWP has several shortcomings that push workers out of legal residential status in Canada. We note that critical needs of this vulnerable group have not been accounted for in IRCC's 2020 policies.

Recommendations

Findings from our research show a need for review and reform of the TFWP. Failings of the TFWP have continued to push TFWs out of status by: (1) making it difficult to achieve PR status; (2) confining workers to one employer; and (3) creating avenues for workers to be exploited and abused by employers and immigration lawyers/consultants. In June 2019, IRCC introduced a new measure to enable migrant workers who have an employer-specific work permit and are in an abusive job situation to apply for an open work permit. This measure helps to ensure migrant workers who need to leave their employer can maintain their status and find another job. A future reassessment of the program should build on consideration of issues of exploitation and abuse of TFWs, as well as the bureaucratic processes that increase their vulnerability to adverse experiences.

We suggest the following specific changes to the TFWP and the immigration system:

- Address barriers to permanent residency
 - Simplify the LMIA process and reduce fees
 - Extend the validity of LMIA's
 - Reduce long wait times for IRCC and Alberta Immigrant Nominee Program (AINP) applications
 - Reduce language and professional test requirements for PR status
- Monitor activities of immigration lawyers and consultants
- Address exploitation and abuse of TFWs by employers
- Enhance access to employment insurance for TFWs
- Extend PR status to those who became undocumented due to the 2014 immigration policy changes

¹Our study utilized a participatory action research (PAR) approach and aimed to empower TFWs for action against their marginalization and precarious immigration status.

Why Do TFWs Stay in Canada

Several factors drive TFWs to stay in Canada after their work permits expire. First, many deplete their resources in their countries of origin to pay the costs of coming to Canada. They often do so because recruiting agencies market the TFWP as a pathway to PR status in Canada. Second, in many instances TFWs are unpaid or underpaid by employers who renege on contractual agreements.

unfavourable socioeconomic conditions in countries of origin, such as high unemployment rates, lead many to stay in Canada in search of better economic opportunities.

This means that many TFWs would have to return home empty-handed, compounding the debts they incurred in their countries of origin as part of the process of coming to Canada. Indeed, several participants explained they did not even have enough savings to pay for their plane ticket home, despite their employers being contractually responsible for return airfare. Third, unfavourable socioeconomic conditions in countries of origin, such as high unemployment rates, lead many to stay in Canada in search of better economic opportunities. Fourth, many TFWs perceive an unplanned return to home country to be self-defeating, and fear humiliation in their home communities related to a perceived failure to succeed.

The majority of TFWs come to, and stay in, Canada in an effort to obtain PR status. However, due to restrictive qualification criteria, many are unable to do so and instead fall into undocumented status.

Discussion of Recommendations

- **Address barriers to permanent residency**

While the majority of TFWs seek PR status, several barriers cause them to instead transition to international student or undocumented status. First, the 2014 TFWP reforms complicated the LMIA application process and increased costs of an application from \$250 to \$1000. This barrier, coupled with frequent rejection of LMIA applications, has made the hiring of TFWs difficult and unattractive to employers, particularly in the current economic context. This also makes it very difficult for TFWs who lose their jobs to find new employment, thereby pushing them out of status. In addition, the 2014 reforms also introduced a new rule requiring employers to limit TFWs to a maximum of 10% of their workforce. As a result of these constraints, many TFWs lost their worker status, found it nearly impossible to obtain new work permits, and thus had to become undocumented.

Second, application delays at IRCC/AINP cause TFWs to wait up to a year to receive information from IRCC regarding LMIA or PR status applications. During this waiting period, many TFWs lose their status, are then deemed to have violated the terms of their residence, and are therefore inadmissible to Canada for several years.

Likewise, AINP applications often take several months to process. These delays are an addition to the frequent policy changes that make the AINP system very challenging and difficult to navigate. If TFWs lose their jobs or fall out of status during this waiting period, they are automatically disqualified from obtaining PR status through the AINP. The AINP also overemphasizes full-time employment as a qualification criterion for PR status, which is not reflective of Alberta's increasingly casual economy. Many residents—TFWs and Canadian citizens alike—have been driven to take on multiple part-time jobs in place of full-time employment.

Discussion of Recommendations cont.

TFWs are able to work and integrate well in Canadian society, usually without the language requirements that are being brandished by IRCC as critical elements of successful settlement in Canada. To ease the pressure on TFWs and enhance their chances at PR status, we suggest: (1) lowering the language requirements to allow qualification of a greater number of these workers; and (2) providing assistance with language testing by, for example, providing free language classes and/or financial support for test registration. Beyond the unrealistic language requirements, other barriers to PR status for TFWs include: (1) requirement of an employer reference, which may never readily come from abusive employers desiring to perpetually wield power over their TFW employees; (2) lack of access to educational opportunities for TFWs, thereby limiting their career progression and chance at PR status; and (3) under the AINP, disqualification of post-graduation permit holders working in careers unrelated to their fields of study. We suggest the adoption of measures to address these barriers and enhance access to PR status for TFWs.

- **Monitor activities of immigration lawyers and consultants and educational institutions**

Following the announcement of changes to the TFWP in 2014, all manner of unregulated immigration consultants arose to take advantage of the situation. Out of ignorance and desperation, TFWs hired and paid unqualified and very often inexperienced immigration consultants to assist with completing applications for residence permits – LMIA, visas, etc. A significantly large number of TFWs ran into problems because their immigration consultants either delayed the filing of their application or made costly mistakes that resulted in rejections. These mistakes significantly contributed to the number of undocumented people in Alberta. In addition to immigration consultants making mistakes, many also knowingly deceived and exploited TFWs. In some instances, immigration consultants and lawyers deceitfully obtained money from TFWs and lured them into filing applications that had no chance of approval.

Discussion of Recommendations cont.

Federal and provincial governments have a responsibility to protect TFWs from exploitation by immigration lawyers and consultants, some of whom are noted as being unqualified or charging exorbitant fees and providing suboptimal services to clients. Despite the existence of the Immigration Consultants of Canada Regulatory Council (ICCRC), our study participants had a general sense of lack of accountability and enforcement of professional standards among immigration consultants providing services to TFWs. For example, despite the many instances of suboptimal services, including exorbitant fees and non-filing of applications, often with significant adverse impacts on the immigration status of TFWs, not a single immigration consultant or lawyer has been investigated, let alone punished, for misconduct. While TFWs might be reluctant to report unprofessional conduct, poor monitoring of the activities of these consultants and lawyers certainly plays a key role in the precarious conditions of TFWs. The activities of these consultants and lawyers can be better monitored by, for example, instituting a provincial registration, accountability, and monitoring system. Such a system exists for immigration consultants and lawyers in Saskatchewan and can easily be replicated in Alberta.

In addition to the exploitation by lawyers and consultants, many TFWs have fallen victim to exploitation by educational institutions. Some colleges prey on the desperation of TFWs to remain in Canada by marketing their programs as a pathway to post-graduation work permits and ultimately permanent residency. Desperate to remain in Canada, some TFWs apply for and receive study permits from IRCC and enrol unknowingly in colleges where they were ineligible for open work permit, with expectations of post-graduation work permits upon completion. IRCC and the Canadian government fail to identify and warn TFWs of these. After a year or two of intensive studies involving huge tuition costs and living expenses, many TFWs learn they were enrolled in colleges that offered programs that did not qualify them for post-graduation work permits.

Discussion of Recommendations cont.

- **Address exploitation and abuse of TFWs by employers**

Because TFWs are reliant on one employer for work permits, they are vulnerable to employer exploitation and abuse. Exploitation often occurs when employers refuse to pay wages, overwork TFWs, or assign them duties Canadian workers refuse to perform for health and safety reasons. TFWs perform the most difficult tasks and receive the most unfavourable work schedules, as opposed to fair rotation among employees. Yet, TFWs are unable to complain or demand a fair distribution of responsibilities for fear they might be laid off in a job market that offers little possibility for obtaining new LMIA's, for all of the reasons explained above.

Participants also reported instances of abuse, which usually took sexual or verbal forms. Several female TFWs reported being sexually harassed or assaulted by supervisors with little or no opportunity for recourse. Verbal abuse often had racial undertones and occurred in the presence of work colleagues, which accentuated feelings of humiliation.

By tying TFWs to particular employers using closed work permits, the TFWP had set these workers up for employer exploitation and abuse. Indeed, service providers and TFWs unanimously described this restrictiveness as "modern slavery." In many ways, the TFWP is employer-driven, and the economic interests of Canadian employers appear to supersede the well-being of TFWs at all times. This posturing of the Canadian authorities appears to subtly support the actions of employers; out of fear of victimization, the majority of affected TFWs do not even venture into filing formal complaints against abusive and exploitative employers. In this regard, we suggest: (1) issuing open work permits to all TFWs upon arrival; (2) incentivising TFWs to report instances of abuse and exploitation by, for example, ensuring they do not experience undue consequences for doing so.

Discussion of Recommendations cont.

While a confidential Tip Line for reporting abuse does exist, complaints can be traced back because TFWs are tied to one employer; and (3) adoption of new monitoring mechanisms, including unannounced periodic visits to places of work, to ensure employers do not take undue advantage of TFWs. The food industry currently has announced and unannounced monitoring mechanisms to ensure food safety, and there is reason to believe the same model can be applied to protect the well-being of TFWs.

- **Enhance access to employment insurance for TFWs**

The current criteria for accessing employment insurance (EI) tend to put TFWs at a disadvantage, as they do not meet all of the criteria for such payments. In particular, despite being contributors, most TFWs do not receive EI payments because they are unable to avail themselves for immediate employment without valid LMIA's. As such, there is a need to reconsider the criteria for accessing EI and accommodate the temporariness of the employment status of TFWs. In some cases, employers deliberately report that TFWs quit their job when they in fact were laid off; the purpose is to render them ineligible for EI. TFWs thus dread termination from work as this can lead to poverty and even homelessness.

The tendency to be denied EI adds to the vulnerability of TFWs and their need to submit fully to the demands of employers, including enduring discriminatory practices. Indeed, some employers capitalize on this precariousness to continue to discriminate against TFWs. Threats of EI denial therefore contribute to the vulnerability of TFWs to employer abuse and exploitation.

Discussion of Recommendations cont.

- **Extend PR status to those who became undocumented due to the 2014 immigration policy changes**

The 2014 reforms outlined above meant 70,000 TFWs work permits expired in 2015. This drove people out of status. Many remained in Canada for a variety of reasons including having amassed large debt in the effort to come to Canada in the first place. Those whose work permits expired and who still remain in Canada should be granted PR status so they can live full social and economic lives in Canada.

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