INTERVIEW WITH THE HONOURABLE JASON KENNEY

Minister of Citizenship, Immigration and Multiculturalism



Q1. How many TFWs were there in Canada in 2008? How are categories like NAFTA visas, professional athletes, artists or religious leaders captured in these numbers?

Please refer to the following Website, which provides preliminary figures for 2008: <www.cic.gc.ca/ english/resources/statistics/facts2008/index.asp>.

Workers in certain types of jobs may not require work permits. This includes adjudicators in the arts, emergency services personnel responding to a disaster, visiting university lecturers, flight crew and civil aviation inspectors. In addition, some journalists, business visitors, performing artists, guest speakers, religious leaders, foreign military personnel, foreign government officials, students on-campus, athletes and coaches (to name a few) may not require a work permit. Please note that statistics on our Website *do not* capture those who *do not require a work permit*.

Note that workers under NAFTA *do* require a work permit, but their employers are exempt from obtaining the HRSDC authorization (the Labour Market Opinion or LMO) normally required to hire them.

Q2. There is much public discourse surrounding increasing TFW numbers in Canada. Is the Government of Canada shifting its focus from permanent to temporary migration? What are the different policy objectives pursued by these two types of migration?

The Temporary Foreign Worker Program aims to address labour shortages that are temporary, where neither Canadians nor permanent residents can be found to meet these needs. Generally speaking, the number of foreign workers that come to Canada depends on employer demand. Therefore, increased numbers of temporary foreign workers should not be interpreted as a shift in the Government of Canada's policy toward temporary migration.

While temporary migration – whether of workers, students, or visitors – responds to diverse specific and short-term needs, Canada will continue to rely on permanent migration to support broader economic, social and cultural objectives. Canada is maintaining the number of permanent residents it admits (between 240,000 and 265,000 permanent residents per year). With respect to economic immigration in particular, there are various options toward attaining permanent residence, to respond to the diverse regional and occupational needs of Canada. The Provincial Nominee Program and Quebec-selected Skilled Worker category remain key programs for meeting local and regional labour market needs, while the Federal Skilled Worker Program is the main national stream for supplying the labour market with needed labour for the longer term.

Q3. Many critics cite the European aphorism "nothing is as permanent as a temporary worker" to suggest that Canada's use of TFWs will have long-term consequences. However, with the Live-in Caregiver Program, and now with the announcement of the Canadian Experience Class it appears that the Government of Canada actually intends to encourage TFWs to stay. Is this the case?

The Canadian Experience Class is geared toward certain temporary foreign workers and foreign student graduates with skilled Canadian work experience. Unlike other existing programs, it allows applicants' Canadian experience to be considered as a key selection factor when immigrating to Canada. Successful applicants in the Canadian Experience Class have necessary the language and occupational

skills to hit the ground running; most often, they are already employed in Canada. For those in the international student stream, they will also have a Canadian post-secondary credential.

Since 1992, the Live-in Caregiver Program (LCP) has been a unique stream of the Temporary Foreign Worker Program (TFWP) that facilitates qualified, low-skilled foreign workers entering Canada. After working as a live-in caregiver for two years, LCP participants may apply from within Canada to become permanent residents. Currently, over 90% of foreign nationals who enter Canada as a live-in caregiver with a work permit apply for permanent residence (PR) through this stream.

Q4. Should TFWs be eligible to access settlement services earlier in their stay in Canada?

Generally speaking, CIC has a duty to maintain quality settlement services for *permanent residents*, to assist in their integration into Canadian society. Those coming here as temporary foreign workers must have the educational, occupational, and language skills required to do the job to which they are destined.

For all temporary foreign workers, CIC expects employers to take an active role in ensuring workers find their place in the community, as employers benefit directly from their presence in Canada.

Also, the Low-skilled Pilot Program imposes several additional requirements on employers. Under the program, the employer assumes greater responsibility for the lower-skilled employees they hire and an employer-employee contract must be signed. Employers must:

- cover all recruitment costs related to hiring;
- help the worker find suitable, affordable accommodation;
- pay full return airfare for the worker;
- provide medical coverage until the worker is eligible for a provincial plan;
- register the worker under the appropriate provincial workers compensation/workplace safety insurance plans.

Q5. There is evidence that suggests that the presence of TFWs can depress wages for local workers, at least those in the bottom wage brackets. What is the Government of Canada doing to ensure that TFWs are not competing for the same jobs as Canadians and that they are actually filling gaps in the Canadian labour market?

The Government of Canada has put in place strict requirements to ensure that Canadians get priority. For example, employers are required to actively recruit Canadian workers at a reasonable wage. If none is available, only then may they recruit foreign workers. Employers hiring foreign workers are required to pay them a wage that is equal to that of Canadian workers doing the same job in the same geographical area where the work will be performed.

Q6. There appear to be a number of generalized concerns surrounding the status and working conditions of TFWs. What is the Government of Canada doing to mitigate against some of these concerns, including the following: a) the restrictive nature of their employment status makes them more vulnerable to unscrupulous employers; b) TFWs are not afforded the same rights as Canadians; c) there does not appear to be a very vigorous enforcement/ compliance mechanism in place to ensure employer compliance to living conditions (like housing standards) or health and safety regulations.

Canadians have the first opportunity at jobs. That is one of the main principles of the Temporary Foreign Worker Program, which is why there are controls in place. In most cases, to ensure Canadians receive priority, employers must be authorized by Service Canada to hire a foreign worker (even when the worker is already present in Canada). This assessment, known as a Labour Market Opinion, must conclude there would likely be no negative impact on the job market for the employer to be authorized to hire temporary foreign workers.

It's also important to remember that temporary foreign workers are in Canada to fill a *specific and temporary* need. Temporary foreign workers are expected to leave Canada if they lose their initial job unless they find new authorized employment. If their intent is to stay in Canada permanently, they may pursue avenues to permanent residency, if eligible.

It's important to note that the same labour standards protect all workers in Canada, including temporary foreign workers. Temporary foreign workers must be paid similar wages and offered similar working conditions as Canadian workers doing the same job. Where Labour Market Opinions are required, employers must prove to Service Canada that workers are being offered working conditions and wages equivalent to those offered to Canadians. Wages are one of the factors that HRSDC/Service Canada considers when deciding whether hiring a foreign worker is the best course of action for Canada. Employers must indicate that the wages they will pay to prospective temporary foreign workers meet or exceed the prevailing wage rate for the occupation and location in question. Temporary foreign workers become members of the union in unionized workplaces, and therefore earn the same wages and have the same working conditions.

The federal government is developing regulatory amendments related to the Temporary Foreign Worker Program that are designed to increase the protection of temporary foreign workers and encourage employer compliance with program requirements. This would include the ability for the federal government to deny employers access to the program for a period of two years, in certain instances. These changes are

intended to be complementary to provincial/territorial labour codes and other workforce regulations. It is anticipated that the regulatory amendments will be finalized in 2010. In the meantime, CIC is working with HRSDC and CBSA to develop implementation guidelines.

In addition, administrative changes recently announced to the Live-in Caregiver Program include requiring employers to provide the similar benefits to those required under the Low-Skilled Pilot Program, except they must provide accommodation rather than assist in finding it. A number of other measures, such as implementing mandatory clauses in employment contracts and improving information materials, are intended to further protections for these workers.

Q7. Like many areas of immigration policy, it appears that policies and regulations surrounding TFWs vary province by province, and that the shared jurisdiction complicated implementation of policies and data collection for evaluation. What is the Government of Canada doing to ensure consistency across the country? For example, if a province like Manitoba introduces useful legislation like the *Worker Recruitment and Protection Act*, does the Government of Canada have a role to play in encouraging that this best practice be replicated across the country?

Approximately 90% of the Canadian workforce is regulated by provincial/territorial governments. Temporary foreign workers have the same rights as their Canadian counterparts. Claims related to mistreatment would also be treated in the same manner as they would for a Canadian worker.

The federal government applauds and encourages provincial efforts that lead to better protection for its workers, including foreign workers.

Q8. There are a number of federal departments and agencies (including HRSDC, CIC, PHAC, and CBSA) implicated in TFW programs. Can you explain the roles of these departments and agencies as well as what kind of coordination infrastructure the Government of Canada has put in place to ensure efficiency and communication among these institutions?

The responsibility for managing the Temporary Foreign Worker Program is shared among three main federal departments: CIC, HRSDC and the CBSA.

CIC is responsible for managing access to Canada when applications for visa and work permits are made at overseas missions or continued access to Canada when applications are made from within Canada. One of CIC's principal concerns is to protect the health, safety and security of Canadian citizens. As such, visa officers in Canada's missions overseas assess the admissibility of foreign nationals to ensure there are no issues concerning security, criminality, and communicable diseases, to cite a few examples. CIC also assesses factors such as the genuineness of the job offer, the legitimacy of the applicant's intentions, and ensures that the workers have the qualifications and ability to do the job to which they are destined.

HRSDC assesses the risks and benefits to the Canadian job market when determining whether or not a temporary foreign worker should be hired. Generally speaking, their assessment must conclude that there would likely be no negative impact on the Canadian job market.

CBSA officers are responsible for assessing the admissibility of foreign workers as they enter Canada. The CBSA is also responsible for the enforcement of the *Immigration and Refugee Protection Act* when workers and employers do not adhere to the terms and conditions set for them by the three departments.

Q9. Temporary work visas were extended in 2007 to 2 years rather than one. As this large number of visas expires in 2009, what does the Government of Canada expect to happen with these TFWs?

In February 2007, the duration of the employer authorization under the Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C and D) was increased from a maximum of 12 months to 24 months.

Temporary foreign workers who come to the end of their work permit can be extended if there is an ongoing need for their labour, and they are willing to stay. CIC has to be satisfied that their intent continues to be temporary. It is the choice of the employer to put forward the name of a new or current foreign workers on an application for a labour market opinion (the authorization). Employers may receive authorization if they intend to retain their current employee. However, as is always the case, CIC will assess on a case-by-case basis, based on the requirements of the *Immigration and Refugee Protection Act*, whether or not a work permit will be issued to the worker. For example, CIC checks to ensure the worker's intention is still temporary and that there are no other issues related to criminality, etc. On May 12th, CIC clarified to its officers that work permit applications cannot be refused solely because a temporary foreign worker:

- has already worked in Canada for 24 months; or
- has not returned home for a minimum period of four months.

For more information, please read the following operational bulletin: <www.cic.gc.ca/english/resources/manuals/bulletins/2009/ob113.asp>.

Q10. Research suggests that the TFW Program functioned as planned during the last IT bust and many of these highly skilled workers left Canada to explore opportunities elsewhere. In the present economic downturn, do you expect the same pattern to repeat itself? If not, what ramifications will this have for future TFW policy?

Our preliminary assessment for 2008 shows that numbers in the occupational categories you've mentioned have remained relatively constant. In managerial occupations (NOC 0), there was a slight increase, from 6,603 in 2007 to 7,288 in 2008. In the professional category, there was a slight decrease, from 34,445 in 2007 to 33,116 in 2008. For 2009, it is possible that the full effects of the recession and its consequences for the labour market will translate into decreased numbers of temporary foreign workers. Generally speaking, it is expected that if there is less demand for temporary foreign workers, fewer will enter Canada and, among those already here, fewer will be extended.

Q11. Some provinces have been using their Provincial Nominee Programs to afford permanent status to needed lower-skilled TFWs. At present, the federal Canadian Experience Class only provides opportunities for the highly educated and high-skilled. Do you have any plans to change this to include lower-skilled professions, or are you content to leave this in the hands of the provinces?

It should be noted that the CEC is not restricted to the very highly educated, such as university-educated professionals, but rather includes those in technical occupations and skilled trades – occupations generally requiring a college diploma, certificate or apprenticeship training.

The Canadian Experience Class is designed to select immigrants who will do well in our labour market in the long term, from a national perspective. Many low-skilled workers fill temporary needs that do not translate into permanent labour market needs, and are more vulnerable to economic downturns. In specific regions and industries where there is a longer-term need for lower-skilled workers, the Provincial Nominee Programs are better suited to matching newcomers with the smaller regions in which they are most in demand. These programs are the most appropriate avenue through which lower-skilled workers can apply to immigrate to Canada.

Q12. In the fall, the Auditor General tabled a report on the Government's management of permanent and temporary migration programs. Among the issues identified in the report are some relating specifically to the TFW Program. It notes that there may be some confusion between CIC and HRSDC about their respective roles in assessing the genuineness of job offers, how that assessment is to be conducted, and the prospect that some foreign workers find themselves in vulnerable positions. What is the Government doing to address the Auditor General's concerns?

We welcome the Auditor General's recommendations and agree with the importance of a well-run program that ensures both the timely arrival and the fair employment of TFWs. In fact, we have already taken steps to address issues identified in the Auditor General's report. Working with HRSDC, we've developed regulatory options to strengthen the integrity of the Program, including clarity around roles and responsibilities. The proposed regulatory amendments will require HRSDC to assess the genuineness of job offers where a Labour Market Opinion is required, and CIC to assess the genuineness of a job offer in Labour Market Opinion exempt situations. We also take very seriously the concerns about TFWs finding themselves in vulnerable working conditions, and through proposed regulatory amendments will take steps to enhance program integrity and improve worker protections, including stricter employer monitoring mechanisms and compliance with the terms and conditions of the job offered to a foreign national. Information-sharing agreements with a number of provinces are forthcoming in an effort to support enforcement of federal and provincial laws and standards. These agreements will better ensure that all TFWs are treated fairly, no matter where they work in Canada. It's important to note that the same labour standards protect all workers in Canada, including temporary foreign workers. Temporary foreign workers must be paid similar wages and offered similar working conditions as Canadian workers doing the same job.

Q13. Much of the readership of this magazine is comprised of researchers. Speaking to them from a policy perspective, what three research questions would be most valuable to you in shaping future policy in this area?

Future research questions might examine:

- the economic performance and contribution of temporary foreign workers – what are the impacts both inside Canada and outside Canada?;
- the role of temporary foreign workers in Canadian society – how they participate in our communities, and how we include them in Canada's social fabric;
- the labour market outlook for various skill levels over the medium to long term.