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January 31, 2019

Dear Mr Cashaback,

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

As the deadline for submissions to the proposed regulatory changes were extended, I am here re-submitting a modified version of our previous position. Please discard our letter dated December 18, 2018.

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 Open Work Permits for Vulnerable Workers indicates an improved awareness in the federal government that employer-specific tied work permits create the conditions for risk and abuse. Indeed, migrant workers' experience has long demonstrated that temporary status under a tied work permit creates significant power imbalances in the employer and employee relationship that is unlike any other in Canada. The proposed vulnerable worker open permit only addresses the problem *after* workers have been physically, mentally or financially abused. It provides a modicum of support to assist workers to escape abuse. But it doesn't do anything to stop the conditions giving rise to the abuse. Further, it requires migrant workers to return to the employer tied work permit streams under the Temporary Foreign Work Program after they have escaped the abusive employer.

MWAC continues to reiterate as part of the broader migrant justice movement that all low-waged, racialized workers currently in the Temporary Foreign Worker Program, should be able to come to Canada with permanent residency status and their families.

We have some specific proposals to strengthen the open permits regime to ensure that they actually serve the interests of workers as intended.

MIGRANT WORKERS
Alliance for Change

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 to actually carry out what they are intended to do. Our proposals are as follows:

1. There must be a clear definition of abuse. It is deeply concerning that the proposed regulations do 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.
    - We recommend that, at the very minimum, abuse be defined as any violation or potential violation of federal or provincial laws. This would include labour relations, employment (including enforcement of the terms of the employment contract), human rights, recruitment protections, and, health and safety laws. Violations or potential violations of minimum labour standards must be considered abuseand grounds for issuance of open permits. It is critical that these protections extend to abuse where policy protections currently do not exist uniformly across provincial jurisdictions - such as protections from recruiter abuse.

2. In the same vein of increased discretion, the proposed regulations do not include an appeal process. Therefore, the only remedy for a worker is to apply for judicial review at the Federal Court of Canada. This is not an appeal, but it is a request to consider the outcome of the application from a legal standpoint - rather than re-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 to provide an opportunity to the worker to re-apply for an open work permit.

3. Further, the proposed 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 say 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. In addition, workers who have lost their permits and become undocumented because of abuse must be able to apply for these open permits.

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 therefore such workers would not be able to access the normal process. 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 and 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. If the proposed open work permit for vulnerable workers only provides a time limited work permit to leave an abusive employer and does not allow for the work done under such a permit to be deemed work under the Caregiver Program for the 24 month service requirement, this will not provide a real remedy for Care Workers to leave abusive situations. Care Workers will still not be able to leave abusive situations because they will fear being timed out of the pathway to PR under the Caregiver 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 provids greater labour mobility to escape abusive employers, 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 workers 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, we propose that investigations, where possible, be done by provincial authorities without the use of CBSA or policing powers.

13. Restriction on employment in "businesses related to the sex-trade" should be removed in these permits. Sections 185(1)(1.b) and 200(3)(g.1) of the Immigration and Refugee Protection Regulations prohibit migrant people from doing sex work-related employment even as federal law has decriminalized such work. This means that migrants engaged in such legal occupations are forced into undocumented work, unable to assert their labour rights, and face abuse and exploitation. It also limits migrant ability to choose their own occupations.

14. The Open Work Permit should be available to all workers on temporary employment permits including workers in the Seasonal Agricultural Workers Program, International Mobility Program, etc.

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.