

**TFWP OPS/BE
QUESTIONS AND ANSWERS**

Date: May 16 2013	SF # [REDACTED] s.16(2)
Team Leader: Janet Walsh	ER ID # [REDACTED] s.20(1)(c)
Officer: David Farrell	ER Name: [REDACTED]
<p>Background: The business builds long homes in BC then dismantles them and ships them to the final site and reassembles them. 10% of their homes are shipped to Canadian destinations, 40% are to US destinations, 30% are to European destinations and 20% are to Japan. ER has applied for one Log Home Builder, duties include regular carpentry duties to create the log home but also involve the erection of the home on the final destination site along with a locally hired crew at the site destination. ER states that he currently has a worker is legally able to work in Canada & Japan and speaks Japanese, also a worker legally able to work in Canada & Italy and speaks Italian, as well as a worker who is legally able to work in Canada & USA. ER states that they now have plans to expand into Russia as they have secured contracts with two builders in Russia who have clients for them however communication has been quite difficult so far. ER states that the success of their expansion a few years ago in Japan was based on their ability to communicate in Japanese and is their awareness of Japanese culture so they feel they should follow the same method for their expansion into Russia. ER has therefore advertised Russian as a mandatory language requirement for the position.</p> <p>ER has also advertised the ability to work in the EU as a requirement so that they have an additional employee who is legally able to supervise and participate in the erection of their homes in Europe.</p>	
<p>Question/Issue: Both of these requirements could significantly limit the Canadian/ Permanent Resident applicant pool however based on the ER's rational the requirements seem to fit the ER's expansion plan. ER states that if they are successful in expanding into other markets they would be busier and be able to hire additional Canadian employees.</p> <p>In light of the recent changes reflected in Canada's 2013 Economic Action Plan; employers are no longer able to advertise a language requirement other than English or French however ER has provided a rational for the requirement which seems to suggest a bona fide language requirement. Should the language requirement be accepted? ER has also provided a rational for the requirement to work in the EU should this requirement be accepted?</p> <p>If either of these requirements should not be accepted what is the reason and wording that we are to use in our decision letters?</p>	
<p>Resources Searched:</p> <p><input checked="" type="checkbox"/> Policy / Directives <input type="checkbox"/> NOC website <input type="checkbox"/> FWS history <input type="checkbox"/> LMI</p> <p><input checked="" type="checkbox"/> Other (please describe below)</p> <p>Discussed with TL</p>	

December 13, 2012

Officer & TL Recommendations:

Officer feels that the ER has a valid rational and a business expansion would lead to job creation for Canadians but hesitates to set a president.

BE Consultant Response:

QUESTION / ANSWER

Should the language requirement be accepted?

The Temporary Foreign Worker Program refers to the National Occupational Classification Code (NOC) to set the requirements for occupations in Canada. Based on the information provided in the "employment requirements" section for the position of a "Log Home Builder (7271)" no reference is made to a foreign language being an essential job requirement.

ER has also provided a rational for the requirement to work in the EU should this requirement be accepted?

The Temporary Foreign Worker Program (TFWP) assists employers in filling genuine labour shortage needs within Canada. If the employer has additional requirements that require the worker to work outside of Canada to meet those requirements is the employer's responsibility. The TFWP will only take into consideration what impact(s) hiring a worker from a foreign country would have on the Canadian Labour Market.

"Human Resources and Skills Development Canada (HRSDC)/Service Canada *is responsible* for assessing applications from employers requesting to hire temporary foreign workers (TFW), and issues a labour market opinion (LMO) on the likely impact these TFWs would have on the *Canadian job market.*"

RECOMMENDATION

In this situation the Program Officer should consider having a focused discussion with the employer in reference to their employment needs (language and the need for the employee to work outside of Canada).

The employer's request for Russian indicates an "excessive" job requirement on the LMO and advertising that is *not* the norm for that employment sector and is not a basic business requirement for that industry. Therefore Service Canada is unable to issue a positive LMO under Genuineness – Reasonable Employment Needs.

The requirement that the employee work outside of Canada for a portion of their employment would appear to be legitimate need in terms of how the employer has structured their business. However, the employer must be able to demonstrate that the Temporary Foreign Worker will have fulltime employment in Canada for the duration of the Labour Market Opinion (LMO). A positive LMO can only be issued for work being performed in Canada. The Program Officer may want to review the employer's "ability to fulfill" in terms of providing fulltime employment within Canada.

ADDITIONAL CONSIDERATIONS

Based on the information provided it would appear as though the employer has advertised for this position in a manner that is in line with their business needs; *however* requesting a foreign language on the advertising as a "requirement" that is deemed to be excessive for the *purposes of participating in the Temporary Foreign Worker Program* has the potential to exclude available Canadians and Permanent Residents from actively pursuing the job offer being posted by the employer. Also the employer's requirement to have the worker fulfill job duties outside Canada are not a factor that Service Canada / HRSDC would consider when issuing labour market opinion (LMO).

REFERENCE

TFWP Website:

http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/index.shtml

TFWP Manual:

Section 2.5.1.3 http://hrsdc.prv/eng/seb/dir/tfwp/program_policy_design/AssessingEmployersAbilitytoFulfill.doc

Consultant: Krishtine Dalton, BEA – July 02, 2013

Forward to: W-T-FWR_Consultant-DTE_Conseiller-GD

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