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s.16(2)

**TFWP OPS/BE**
**QUESTIONS AND ANSWERS**

| | |
|---|---|
| Date: Sep5th 2014 | SF # [redacted] |
| Team Leader: Zinnie Tsang | ER ID [redacted] |
| Officer: JC Kwok | ER Name: Houweling Nurseries Ltd. dba Houweling's Tomatoes |

Note: **URGENT: AGR files**

**Question/Issue:**

ER's indicated on the LMIA and during the interview that there are no language requirements for the position of a Greenhouse Worker (NOC 8432). However, ER screened out a Canadian/PR applicant who he said was unsuitable. "The applicant did not speak any English and during the interview, was accompanied by her daughter who did the translation for her from Vietnamese to English." ER further explained that the co. has staff on site to translate from Spanish, Punjabi/Hindi, and Filipino but does not have anyone to do the translation from Vietnamese. In addition, the WorkBC ad indicates English as the language required.

Q: 1. Are you allowed under the AGR stream to have no language requirements, neither oral nor written, for a position sought?

Q. 2. Can we refuse the LMIAs for no labour shortage as a Can/PR was screened out due to inability to converse in English when ER has confirmed there are no language requirements for the position?

**Resources Searched:**

☑ Policy / Directives ☑ NOC website ☑ FWIS history ☐ LMI

☐ Other (please describe below)

TFWP website
WiC

**Officer & TL Recommendations:**
Add. Info:
-Currently employs174, 76 of which are FWs hired under SAWP or the AGR stream.
-Total positions sought: 80
-4 Can/PRs hired out of 8 who showed up for the interview

**BE Consultant Response:**

**QUESTION / ANSWER**

Q: 1. Are you allowed under the AGR stream to have no language requirements, neither oral nor written, for a position sought?

> The TFWP website informs employers that "...language restriction (such as the ability to speak English or French) does not apply to lower-skilled positions related to on-farm primary agriculture...." This means that for these positions, *an employer may provide job offers to workers that do not necessarily speak English or French*.

> This is not the same as the statement that there are "no language (oral or written) requirements...for a position sought". In other words, no language restrictions is not equivalent to no language requirements.

> The removal of language restriction in this sector supports a common understanding that there is a

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reasonable labour shortage for 'lower-skilled' agricultural jobs. One explanation is that many of the job duties involve harvesting time sensitive primary agricultural produce/commodities. These job duties are such that the ability to speak other languages is not imperative to the greater benefits of the primary agricultural based labour market. And, removing of language restriction does not necessarily have a negatively impact on the Canadian labour market (see IRPR section 1.01).

* > A more precise question for this case is not necessarily whether an employer is "allowed to...have no language requirments..." but rather, can an employer chose to not hire Cdns/PRs if they do not speak English or French?

The assessment process should take into consideration the following:

> If an employer discloses that s/he did not offer the jobs to Cdns/PRs because they could not speak either English or French, then the TFWP Officer must gather more information from the employer to determine whether the explanation is reasonable and sensible. For example, has the employer hired other workers that do not speak English or French (either TFWs or domestic workers)?

> An employer's rationale that Cdns/PRs applied for greenhouse worker positions but they were not hired due to their inability to speak English or French is not an acceptable reason. This is because English or French is not necessarily a requirement for these job offers; and, as noted by the TFWP Officer, this also raises the concern around 'real' labour shortage for these job offers.

> Additionally, the statement that the "ER...does not have anyone to do the translation from Vietnamese" is not an acceptable reason under the TFWP for an employer to limit the recruitment results and screen out Cdns/PRs who speaks a particular language (i.e.: Vietnamese in this case).

Q. 2. Can we refuse the LMIAs for no labour shortage as a Can/PR was screened out due to inability to converse in English when ER has confirmed there are no language requirements for the position?

> Yes.
> FWS shows that this employer is requesting a total of 80 job positions under NOC 8432. If the employer's recruitment efforts resulted in Cdns/PRs who have met the job duty requirements, then the TFWP labour shortage factor has not fully been addressed.

**RECOMMENDATION**

> To issue a refuse as noted by the TFWP Officer in the above.
> To consider approving only a portion of the requested positions.

*A summary in the notes to file would be useful.

**REFERENCE**

ESDC, TFWP Internet
http://www.esdc.gc.ca/eng/jobs/foreign_workers/lower_skilled/index.shtml

IRPR, Section 203(1)
http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-227/page-85.html#docCont

FWS, ER ID [redacted]

Consultant: Jenny Lo, BEC, September 9, 2014
Forward to: W-T-FWR_Consultant-DTE_Conseiller-GD

December 13, 2012