

s.20(1)(c)  
s.21(1)(b)

**Question/Issue:**

Do the significant reasons for issuing a negative decision outweigh the overreaching labour market factors?

**Resources Searched:**

- Policy / Directives     NOC website     FWIS history     LMI  
 Other (please describe below)  
TFWP website

**Officer & TL Recommendations:**

**BE Consultant Response:**

**QUESTION / ANSWER**

Do the significant reasons for issuing a negative decision outweigh the overreaching labour market factors?

Yes.

**Key points**

- > An employer must always comply with the requirement of the TFWP.
- > If an employer does not comply with the TFWP requirements, as legislated under IRPR, then ESDC/SC cannot provide a positive LMIA decision.
- > The legislated IRPR factors that pertain to the TFWP are related to "the overreaching labour market factor".
- > In other words, the statement noted above, "...significant reason for issuing a negative decision outweigh...labour market factors" does present some contradictions.

**Further explanation**

- > If an employer has not met the TFWP requirements; and,
- > If an employer has had the opportunity to understanding the details of the TFWP, by way of having conversations with a TFWP Officer(s); and,
- > If the employer does not comply with the TFWP requirements; then,
- > ESDC/SC TFWP Officer cannot issue an LMIA decision that contradicts legislation/IRPR requirements.

\*It appears that there are multiple IRPR factors that have not been met in this case. This is based on the information provided in a total of four BERTS (inclusive).

\*The employer must comply with all the requirements that ESDC/SC Officer(s) have stated, and explained in previous conversations.

NOTE: In no circumstances can ESDC/SC except "clerical error" from an employer as an explanation or a rationale for why the TFWP requirements have not been met.

