



The Honourable Sean Fraser
Minister of Immigration, Refugees, and Citizenship
Minister@cic.gc.ca

May 26, 2023

Re: The Issue of Misinterpretation of the *Immigration and Refugee Protection Act (SC 2001, c 27)* and the *Immigration and Refugee Protection Regulations (SOR/2002-227)* by the Philippine Consulate General in Canada

Dear Minister Fraser,

On behalf of The Canadian Association of Professional Immigration Consultants (CAPIC), we would like to bring a serious issue to your attention with a request to seek remedies for it. The Philippine Consulate General in Canada (the Philippine Consulate) seems to have misinterpreted the *Immigration and Refugee Protection Act (SC 2001, c 27)* and the *Immigration and Refugee Protection Regulations (SOR//2002-27)* (IRPR) in their [Guidance on the Verification of Employment Documents](#) (the Guidance) issued in March 2023. The Guidance categorizes work permit and temporary resident visa (TRV) immigration service fees as part of employment recruitment and prohibits such fees to be charged to Filipino workers. Based on such misinterpretation, the Philippine Consulate requires immigration consultants (RCICs) and Canadian employers to sign an affidavit when representing and hiring Filipino workers, respectively.

Subparagraphs 209.2(1)(a)(ix) and 209.3(1)(a)(xv) of IRPR do stipulate that Canadian employers must bear the employer compliance fee, the labour market impact assessment fee, and the foreign worker recruitment fees. However, temporary residency processing fees and immigration service fees do not fall under the jurisdiction of these two subparagraphs. Subparagraphs 209.2(1)(a)(x) and 209.3(1)(a)(xvi) of IRPR stipulate that the temporary residency processing fees can be borne by foreign workers, which include the TRV fee of \$100, temporary resident permit

fee of \$200, and work permit fee of \$155 prescribed in subsections 296(1), 298(1), and 299(1) of IRPR respectively. Subsection 91(2) of the *Immigration and Refugee Protection Act* (SC 2001, c 27) (IRPA) authorizes authorized representatives to charge for their immigration advice and services. No provisions in either IRPA or IRPR category state such professional service fees as part of the recruitment scheme. Nor does the existence of any provision in IRPA or IRPR require authorized representatives to put such service fees to employers of their clients when representing the clients to apply for a TRV, TRP, or a work permit.

The Guidance, as provided by the Philippine Consulate overreaches its jurisdiction on Canadian soil. The Guidance has no authority within Canada, nor should it supersede applicable Canadian statutes and regulations. The signing of affidavit requirement infringes the legitimate rights of RCICs. RCICs have the right under Canadian law to charge fair and reasonable fees to those who hire their services for both permanent and temporary residence matters, including services for work permits and temporary resident visas. Further, the affidavit compels RCICs to monitor working conditions and undertake any or all acts that may be necessary for the safety and well-being of the Filipino worker and a myriad of other conditions. Though CAPIC agrees that workers must be treated fairly and be informed of their rights, such imposed obligations go beyond RCICs' capacity. Needless to say, that no Canadian employer would allow such a third party RCIC to oversee these types of issues in their workplace.

Canada has robust labour and safety standards, both at the federal and provincial levels, including strong education on workers' rights. Canadian employers must ensure they meet their obligations. RCICs must provide competent and ethical service; they are, however, allowed under the law to be paid for that service. We respectfully request that



your office and other departments within the Canadian Government take appropriate action in the noted overreach and the subsequent impact on Canadian businesses, citizens, and permanent residents of Canada.

Yours Truly,

Dory Jade, C. Dir.
Chief Executive Officer
CAPIIC-ACCPI

Enclosure 2

c The Honourable Mélanie Joly, MP, Minister of Foreign Affairs
The Honourable Marco E. L. Mendicino, the Minister of Public Safety



Guidance on the Verification of Employment Documents

1. **Effective 15 March 2023**, all requests for MWO (POLO) Vancouver verification must satisfactorily comply with the revised checklist of documentary requirements;
2. The revised Checklist includes the required Affidavit of Undertaking to be submitted by the Employer and Immigration Consultant, as the case may be. Another Affidavit of Undertaking shall likewise be submitted by the Philippine Recruitment Agency.

The Undertaking is aimed to ensure that Filipino workers are not being charged fees for the LMIA services and other recruitment-related fees. This new requirement is based on the new amendments to Canada's Immigration and Refugee Protection Regulations.

Philippine laws and regulations likewise prohibit fees to be charged against the workers (which should however be shouldered by the employers). These prohibited fees include all services related to the act of hiring or recruitment or securing employment, such as LMIA, work permit, visa fee, airfare, POEA processing fee, OWWA membership contribution, among others.

This new requirement is also being implemented to address the increasing fraudulent practices among Immigration consultants who have reportedly been charging exorbitant fees against the workers, oftentimes without the knowledge of the employers. Fees being charged by some unscrupulous immigration consultants are being done in the guise of "immigration service".

3. Employers in Canada will be required to submit an affidavit of undertaking (which must be notarized by a commissioner of oath) that he will assume responsibility to pay for all recruitment costs, including LMIA work permit application, visa fee,

airfare from the Philippines to jobsite, POEA processing fee, OWWA membership fee and insurance coverage for the workers. The employer shall also ensure that his immigration consultant or third party representative had not charged any recruitment-related fees against the Filipino worker, and will undertake to reimburse the same should there be fees paid by the worker. This requirement will be required for both direct hire exemption as well as regular agency recruitment.

4. Documents submitted must be arranged in the prescribed order or sequence for easy evaluation and processing. The list of documents sent for verification must be enumerated in the covering letter addressed to the Labor Attaché;

5. Employers are advised to make sure that the employment contract/employment offer must be dated and signed by the worker/employee and the employer ON ALL PAGES;

6. MWO verification of the required documents is a requisite for registration by the Department of Migrant Workers (DMW) and the processing of the Overseas Employment Certificate (OEC) for the recruited or hired Filipino worker. The verification function is intended to ensure the legal existence of the employer/company, its financial capacity to pay the salary offered and comply with the terms and conditions of employment. It also verifies the authenticity of the work permit of the worker;

7. The hiring of Filipino workers by foreign employers or companies may be done thru (a) agency hiring; (b) direct hiring; and (3) government to government arrangement as agreed upon thru a Memorandum of Understanding (MOU), or bilateral labor agreements;

8. As a general rule, Philippine laws and regulations allow the deployment of Filipino workers for overseas jobs based on agency-hiring. This means that foreign employers or companies hiring Filipino workers must deal with and enter into a recruitment agreement with a duly licensed Philippine recruitment agency for the purpose of sourcing out, screening and selecting suitable and qualified applicants. The Philippine recruitment agency shall be responsible for the submission and processing of the documents verified by MWO to the DMW, and shall assist hired or selected workers with all the pre-travel and deployment requirements in the Philippines including the pre-departure orientation service (PDOs). As a protective measure, the PRAs shall be jointly and severally liable to the workers in case of contractual violations of the terms and conditions of employment;

9. Direct-hire processing of contracts, on the other hand, is merely an exemption to the rule. It is not a matter of right. It may be allowed subject to certain criteria or conditions. The Migrant Workers Office (MWO) may or may not recommend direct hiring, which authority however rests solely with the Secretary (Minister) of the Department of Migrant Workers. Such being the case, direct hiring may be recommended or allowed on a one-time/one transaction basis only for company/business employers in Canada who are hiring up to a maximum of 5 workers (in lieu of the current practice of allowing piecemeal and cumulative processing of up to 5 workers). An employer who had previously availed of the direct-hire exemption will no longer be allowed to directly hire and is kindly advised to tie-up with, and process their contracts through a duly licensed Philippine recruitment agency of their choice;

10. Filipino workers being employed on direct-hire must be for jobs belonging to TEERs 1, 2 & 3 only, of the updated National Occupation Classification (NOC) of Canada and must be offered an hourly wage rate of not lower than the provincial/territorial/area median wage as prescribed in the Job Bank website (www.jobbank.gc.ca). Employers hiring Filipino workers under TEERs 4 & 5 will have to be processed through a Philippine recruitment agency.

11. Submission of the application to our office for direct hire exemption shall, at all times, be done directly by the employer. No intermediary or third party representatives shall be recognized except those registered as recruitment agencies in Canada. Documents submitted by third party representatives shall be disapproved and returned.

12. Incomplete submission of documents, payments, or other deficiencies including missing signatures shall not be processed and will be immediately returned back to senders. Employers are advised to strictly comply with all the requirements to avoid delay. Release of verified documents shall be done within seven (7) working days after evaluation and completion of all the requirements. MWO Vancouver reserves the right to refuse applications which are not in conformity with the minimum requirements and standards prescribed under Philippine laws and regulation.

13. All documents should be sent in two (2) separate sets or copies together with a self-addressed pre-paid return envelope (Canada Express Post, others) to the address below:

The Labor Attaché
Migrant Workers Office (MWO)
Labor Section
Philippine Consulate General
Suite 601, 999 Canada Place
Vancouver, BC V6C 3E1



Philippine Consulate General
Vancouver, Canada

Philippine Consulate General
999 Canada Place, Suite 660
Vancouver, BC V6C 3E1

P: 604-685-1619
F: 604-685-9945
E: vancouverpcg@telus.net

9 AM - 5 PM (Monday to Friday
except on Philippine and
Canadian holidays)

