Canadian Association of
Professional Immigration Consultants

L'Association Canadienne des
Conseillers Professionnels en Immigration

CAPIC's Submission on the Issue of Misinterpretation of IRPA and IRPR Concerning Filipino Worker Protection

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The Canadian Association of Professional Immigration Consultants (CAPIC), as the voice of the immigration and citizenship consultant profession, aims to foster professionalism and integrity among its members, which number about 5,000 Canadian immigration and citizenship consultants, also known as Regulated Canadian Immigration Consultants (RCICs). In March 2023, CAPIC became aware of the misinterpretation of Canadian immigration law and regulations by the Philippine Consulate General in Canada (the Philippine Consulate) concerning the Filipino worker protection regime, which interferes with Canadian jurisdiction and has potential impacts.

To address the issues, CAPIC requested a meeting with the Philippine Consulate on April 20, 2023. In lieu of a meeting, CAPIC was asked to forward a submission. Please find such enclosed, including input from CAPIC members.

Background

1. The authorized immigration service and advice prescribed by Canadian immigration law and regulations

The *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) and the *Immigration and Refugee Protection Regulations*, SOR//2002-27 (IRPR) regulate immigration to Canada. Immigration by provisions of IRPA and IRPR includes both seeking permanent residency and temporary residency in Canada. IRPR prescribes three temporary resident classes: Visitor in s. 191, Worker in s. 194, and Student in s. 210.

S. 11(1) of IRPA requires foreign nationals of visa-required countries to obtain a temporary resident visa (TRV) before coming to Canada. Foreign nationals are not allowed to work in Canada unless authorized to do so as per s. 30(1) of IRPA. A delegated Canadian officer may authorize foreign nationals to work in Canada upon their applications if they meet the conditions set out in IRPR according to s. 30(1.1) of IRPA.

Fees may incur when foreign nationals seek entry to Canada as workers. These include government processing fees and immigration professional service fees if they choose to retain an authorized representative to apply for their work permit on their behalf. Government cost recovery fees for hiring foreign workers, such as LMIA fees and cost recovery fees imposed by the Canadian Government for the processing of work permit applications prescribed in IRPR include fees to be borne by employers and foreign workers respectively. Immigration professional service fees are to be borne by Client, a term defined in the s. 1(1) of the *Code of Professional Conduct for College of Immigration and Citizenship Consultants Licensees*, SOR/2022-128 (Code of Professional Conduct). It reads:

> ***client***
> means a person or entity that
> (a) has entered into a consultation agreement or service agreement with a licensee;
> (b) consults with a licensee who provides or agrees to provide immigration or citizenship consulting services to them; or
> (c) having consulted with a licensee, reasonably concludes that the licensee has agreed to provide immigration or citizenship consulting services to them.
> (client)

a. Fees must be borne by employers

Canada runs two programs to facilitate entry for foreign nationals to work in Canada pursuant to ss.204 to 208 of IRPR: the International Mobility Program (IMP) and the Temporary Foreign Worker Program (TFWP). There are two types of work permits: open work permit and employer-specific work permit.

No employer is involved in open work permit applications because the permits are open, and the worker may work for any employer unless there are prescribed conditions. The employer-specific work permit applications require a mandatory document from the employers before the foreign nationals to be hired apply to IRCC for a work permit. It is a job offer number generated from the IRCC Employer Portal through the IMP and a confirmation letter based on a positive Labour Market Impact Assessment (LMIA) through the TFWP. The former requires employers to pay a $230 employer compliance fee for each job offer as per s.303.1 of IRPR, and the latter to apply to the Employment and Social Development Canada (ESDC) for an LMIA and pay a $1,000 processing fee for each intended worker pursuant to s. 315.2(1) of IRPR.

Employers may hire recruitment agents to recruit foreign workers and retain authorized representatives to generate the job offer or apply for an LMIA on their behalf.

The above-mentioned fees and costs, according to ss. 209. 11(1)(e)(iii) and (iv), and 209.2(1)(a)(ix) and (x) of IRPR, must be borne by employers and cannot be recovered from foreign workers. The provisions read:

> 209.11(1) An employer who has made an offer of employment to a foreign national referred to in subparagraph 200(1)(c)(ii.1) must, before the foreign national makes an application for a work permit in respect of that employment, provide the following information to the Minister using the electronic means that is made available or specified by the Minister for that purpose:
>
> ….
>
> (e) an attestation that
>
> ….**(iii)** the employer has not, directly or indirectly, charged or recovered from the foreign national the fee referred to in subsection 303.1(1) or any fees related to the recruitment of the foreign national, with the exception of the fees referred to in subsections 296(1), 298(1) and 299(1), and**(iv)** the employer has ensured that any person who recruited the foreign national for the employer did not, directly or indirectly, charge or recover from the foreign national the fee referred to in subsection 303.1(1) or any fees related to the recruitment of the foreign national, with the exception of the fees referred to in subsections 296(1), 298(1) and 299(1).
>
> 209.2(1) An employer who has made an offer of employment to a foreign national referred to in subparagraph 200(1)(c)(ii.1) must comply with the following conditions:
>
> (a) during the period of employment for which the work permit is issued to the foreign national,
>
> (ix) the employer must not, directly or indirectly, charge or recover from the foreign national the fee referred to in subsection 303.1(1) or any fees related to the recruitment of the foreign national, with the exception of the fees referred to in subsections 296(1), 298(1) and 299(1), and
>
> (x) the employer must ensure that any person who recruited the foreign national for the employer does not, directly or indirectly, charge or recover from the foreign national the fee referred to in subsection 303.1(1) or any fees related to the recruitment of the foreign national, with the exception of the fees referred to in subsections 296(1), 298(1) and 299(1); and
>
> ….

b. Government processing fees to be borne by foreign nationals

Foreign workers are applicants when applying for a work permit. They must pay the work permit Government cost recovery processing fees and the open work permit rights and privileges fee, if applicable, when submitting their work permit applications. S. 10(1)(d) of IRPR requires applicants to pay the applicable processing fee before submitting an immigration application. Failing to do so will cause their applications to be returned without processing as per s. 12 of IRPR. Some employers may generously opt to pay these fees on behalf of their workers, but others may not. For those seeking open work permits, there is no employer to pay such fees.

Filipinos require a TRV or an eTA (if they are eligible for it) to enter Canada. Therefore, both the TRV/eTA and cost recovery work permit processing fees charged by the Government of Canada will occur when they apply for a work permit. If they are inadmissible, which means they should not be admitted to Canada, but they think their situations justify their admissions, they need to apply for a temporary resident permit (TRP). These are the processing fees to be borne by Filipino worker applicants.

Note that the above-mentioned ss. 209. 11(1)(e)(iii) and (iv), and 209.2(1)(a)(ix) and (x) of IRPR, which prohibit employers to recover fees and costs borne by them from intended foreign workers listed fees referred to ss. 296(1), 298(1), and 299(1) as exceptions. These are the processing fees that can be borne by foreign workers or be recovered from foreign workers if paid by employers on behalf of the workers. They are TRV processing fees of $100 prescribed in s. 296(1), temporary resident permit fees of $200 in s.298(1), and work permit processing fees of $155 in s. 299(1). The provisions read:

> 296(1) A fee of $100 is payable for processing an application for a temporary resident visa to enter Canada one or more times.
>
> 298(1) A fee of $200 is payable for processing an application for a temporary resident permit.
>
> 299(1) A fee of $155 is payable for processing an application for a work permit.

These government processing fees for entry and status documents are collected by the Government of Canada to cover the cost of assessment of the eligibility and admissibility of applicants. They are not related to foreign worker recruitment activities. There is no Canadian legislation including immigration law

that compels employers to pay these particular fees as they are not considered recruitment fees.

c. The professional service fees of authorized representatives

Immigration service in Canada is an authorized service. Only authorized representatives are allowed to provide paid immigration service and paid advice. S.91(2) of IRPA authorizes three groups of professionals to charge for immigration service and advice; immigration and citizenship consultants (RCICs) are one of the three prescribed authorized representatives. It is an offence to provide Canadian immigration service or advice for a fee without being an authorized representative according to s. 91(9) of IRPA. RCICs are regulated and required to follow the Code of Ethics and provide competent and ethical service, including signed agreements with clients and delivery on the scope of services.

The immigration professional service fees are distinct and separate from government processing fees, recruitment fees, or any other third-party fees incurred in the process of hiring foreign workers by employers. They are for services rendered by authorized representatives when dealing with matters within the jurisdiction of IRPA and IRPR.

Employers may out of goodwill assume the government processing fees of their intended foreign workers' TRV, work permit, or TRP as well as the professional service fees to obtain the work permit. However, it is not their legal obligation to do so as per IRPA and IRPR and nor is the requirement indicated anywhere in Canadian immigration law, that the employer is required to pay these costs.

2. The worker protection rules implemented by the Consulate

The *Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016* (Revised POEA Rules and Regulations) by the Philippine Government and the Guidance on the Verification of Employment Documents (the Guidance) issued by the Philippine Consulate in March 2023, are aligned with Canadian employment standards statutes and IRPR concerning the rule of no shift of charge to foreign workers in respect of recruitment fees.

However, the Guidance categorizes or considers 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. Further, the Guidance requires employers and representatives to submit an affidavit of undertaking to confirm their compliance with the Guidance, stating such a requirement "is based

on the new amendments to Canada's Immigration and Refugee Protection Regulations." This is simply not the case within Canadian law.

3. The misinterpretation of applicable Canadian laws

The issues stated above, likely arose from misinterpretation of applicable Canadian laws.

First, while it's true that amendments to the IRPR by SOR/2022-142, ss.8 and 9 add the requirements to employers to comply with the federal or provincial employment statutes and no shift of recruitment cost to foreign workers, the amendments do not change the nature of immigration service and the processing fees of TRVs, work permits, and TRPs. On the contrary, the amended provisions expressly exempt these fees from its no-charge, no recovery requirement. Therefore, the Guidance is, in fact, based on the Philippine Consulate's misinterpretation of the aforesaid amendments instead of the amendments per se. See the included text of ss. 209. 11(1)(e)(iii) and (iv), and 209.2(1)(a)(ix) and (x) of IRPR, which are the amendments referred to in the Guidance.

Second, the Guidance used the term "immigration consultant" twice in a defamatory way, which reads, "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'". We do not know whether the term refers to immigration consultant as prescribed in the College Act, or any self-claimed consultants that represent Filipino workers dealing with their entry to Canada as workers. Please note that immigration consultant is one of the variations of immigration and citizenship consultants, the proper and legal term as noted in s. 2 of the College Act that is only for licensed immigration consultants.

It is unclear whether the Guidance means unauthorized practitioners (UAPs, namely, non-licensed representatives) or immigration consultants who constitute a licensed profession. The appropriate approach to address the individual issue is to report the particular immigration consultant(s) to the College instead of labeling a federally regulated profession as a whole if it concerns immigration consultants. If the persons are UAPs, the appropriate approach is to report the issue to the Canadian law enforcement department, as it is a criminal offence for UAPs to charge for immigration services.

4. **The potentially damaging effect of such misinterpretation**

CAPIC understands the good intention of the protection of Filipino workers provided by the Guidance. However, the misinterpretation of the IRPR amendments may cause unintended damaging consequences, which could cause opposite effects.

a. **Diplomatic inappropriateness**: The Guidance conflicts with IRPA and IRPR on Canadian soil. The signing of affidavit requirement infringes Canadian legal jurisdiction and the legitimate rights of RCICs bestowed by IRPA, the most important Canadian statute governing Canadian immigration matters passed by Parliament.
b. **Counterproductive effect to the objectives prescribed in the Revised POEA Rules and Regulations**: Statement.5, Rule 1, Part 1 reads: "To educate Overseas Filipino Workers through dissemination of information, not only of their rights as workers but also of their rights as human beings, as well as instruct and guide the workers on how to assert their rights, and provide available mechanisms to redress violations of their rights."
The Guidance fails to distinguish legitimate immigration consultants being authorized representatives from unauthorized practitioners (UAPs). It also fails to identify the right avenues to address professional misconduct and immigration fraud.
Given the fact that UAPs are the main source of immigration fraud, such failures give workers a false impression that anyone can provide immigration service, and thus inadvertently circulates misinformation. The false information disseminated makes it harder for Filipino workers to make an informed decision and cause bewilderment when in need of help from Canadian authorities, either the regulatory body of immigration consultants or a law enforcement apparatus. This is contrary to the objective stated in Statement 5 as well as the general objective of protecting overseas Filipino workers of the Revised POEA Rules and Regulations.

Recommendations

Based on the factors in the Background section, CAPIC's recommendations are as follows:

a. **Respect IRPA and IRPR**: Revise the Guidance by correctly categorizing the nature of TRV, work permit, TRP processing, and professional

immigration service related to these proceedings as immigration matters, not recruitment.

b. **Respect the College Act**: Use the designation of immigration consultant and its variations only to address licensees of the College, namely, the regulatory body.
c. **Report immigration malpractice**: When alleging professional misconduct committed or breach of the Code by a licensee of the College, contact the College or help the worker file a complaint to the College instead of making statements that are defamatory towards the immigration consultant profession, a profession established by a Canadian federal statute passed by Parliament.
d. **Report immigration and related fraud**: When alleging immigrant fraud, report it to Canadian authorities.

Conclusion

CAPIC requires its members to fully comply with IRPA, IRPR, the College Act, the Code, applicable federal and provincial statutes and regulations, and applicable foreign laws. Further, CAPIC leads and protects the immigration and citizenship consultant profession by advocating for the legitimate rights of RCICs.

While CAPIC appreciates and supports Philippine Consulate's policies and approaches to protecting its citizens when seeking employment opportunities in Canada, we respectfully request the Philippine Consulate to respect Canadian laws including IRPA, IRPR, and the College Act and interpret it correctly and accurately. Also, we hope Canadian immigration stakeholders, including the Philippine Consulate will respect the immigration and citizenship consultant profession established by the Government of Canada.

CAPIC believes there is good intention behind the Guidance and brings forth the recommendations in the spirit of protecting all within the process and with the intent of issues being addressed properly, efficiently, and effectively to the benefit of protecting Filipino workers and respecting both Canadian laws and regulations and the profession of the immigration and citizenship consultants.

Being a leader of the Canadian immigration consulting profession, CAPIC is the only organization recognized by the Canadian government departments at both the federal and provincial level in representing immigration consultants. We strive to help resolve immigration issues. CAPIC is ready and willing to work with the Philippine Consulate where our further assistance is needed when working an effective solution to fulfilling both goals.

About CAPIC

The Canadian Association of Professional Immigration Consultants (CAPIC) is the professional organization representing the interests of Canadian Immigration Consultants. The organization advocates for competency, ethical conduct, and consumer protection in the immigration consulting industry. CAPIC's mission is to lead, connect, protect, and develop the profession, serving the best interests of its nearly 5000 members. It is the only association recognized by the Government of Canada as the voice of Canadian immigration and citizenship consultants. CAPIC is a major stakeholder consulting with federal and provincial governments and their respective departments on legislation, policy, and program improvements and changes.

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