

David Garson was quoted in Society for Human Resource Management.

**Canada's Slow Processing of Foreign Work Permits
Adversely Affects Employers
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By Susan R. Heylman

A dramatic slowdown in the processing of temporary work permits by Canadian consulate offices following regulatory changes to Canada's Temporary Foreign Worker Program is affecting the ability of employers to move workers into Canada.

"It used to be that, if you filed an application for a work permit with a Canadian consulate in the United States, it took two to three weeks; now, it's going to take five to six weeks. The processing time has lengthened considerably," said David Garson, an immigration lawyer with Guberman, Garson in Toronto, Canada.

"If you're an HR person or working with a firm and you need someone here on a work permit or a visitor's visa, you basically have to begin your preparations several months in advance, rather than several weeks in advance, if you want to be absolutely certain the person is going to show up when you need them to show up."

Employers seeking to hire temporary foreign workers in Canada must apply for a Labour Market Opinion, detailing the job offered to a foreign worker. Citizenship and Immigration Canada (CIC), the agency responsible for the foreign worker program, is now taking a very rigorous look at the genuineness of the job offered before approving a work permit, Garson said.

If the agency doesn't think an employer's job offer is genuine, they don't think the terms and conditions are accurate, or they don't think the information is absolutely correct, then they can not only turn down the application for a work permit, they can stop an employer from getting work permits for employees for a two-year period, he explained.

In addition to imposing a two-year ban, CIC will post the company's name on its ineligible employers' list on its website. Temporary foreign workers lose their temporary resident status if they accept a job offer from an employer who has been placed on the list.

To some extent, this means an employer operates under a heavy cloud, said Garson. "You have to be absolutely certain that everything is done correctly and 100 percent right, because if you're not, the repercussions are rather grave."

Cumulative Duration

The changes to the program also establish a maximum allowable time that a temporary foreign worker may work in Canada before returning home. Foreign workers who start work after April 1, 2011, are subject to a four-year cumulative duration, followed by a period of four years during which the worker would not be eligible to work in Canada.

CIC recommends that employers be aware of the total time that a foreign worker has accumulated working in Canada before hiring him or her, because a job offer to a temporary foreign worker who has reached, or is close to reaching, the maximum four-year duration could result in a refusal to issue a work permit, or in the work permit not being issued for the full duration of the job offer.

Going forward, this cap raises an important strategic issue for employers, lawyers, and anyone who is representing foreign workers, said Garson, because "you've got to keep this in the back of your mind at all times."

The regulatory changes to the Temporary Foreign Workers Program, the result of amendments made to the Immigration and Refugee Protection Regulations, became effective April 1.

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