



How we're creating an illegal workforce

Controversial federal program brings in foreigners for temporary jobs, but leaves them ripe for abuse

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Foreigners in Canada on temporary work permits are being pushed into Toronto's underground economy by the recession and a controversial federal program that leaves them vulnerable to abuse, a *Star* investigation has found.

They include people like Tony, a 29-year-old Honduran, who left his Alberta farm job after complaining of long hours and lower-than-promised wages. He rode a bus to Toronto in mid-September with two fellow Hondurans from the same farm. He now works illegally renovating homes, and his friends work illegally cleaning schools.

"I want to be someone, to do something with my life – that's why I'm here," says Tony, who fears being deported.



Tony, 29, from Honduras, now works illegally in Toronto. He "escaped" an Alberta farm where he spent 12 hours a day on his knees picking green onions.
VINCE TALOTTA/TORONTO STAR

Also citing employer abuse is a Salvadoran couple fired from their Halifax hotel jobs when the woman got pregnant. They moved here to look for work in September.

In another case, 20 Filipinos arrived in Vancouver last May after each had paid a recruiter \$5,000 plus airfare. But the factory where they were to work had burned

HOW THE TEMPORARY FOREIGN WORKER PROGRAM WORKS:

The program is made up of four streams: the Live-In Caregiver Program, the Seasonal Agricultural Worker

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Program, and programs for high-skilled workers and low-skilled ones.

The hiring of a temporary foreign worker begins with employers asking Human Resources and Skills Development Canada (HRSDC) for a "labour market opinion" (LMO). Without an approved LMO, Citizenship and Immigration Canada won't issue a work permit. The LMO assessment includes verifying whether the foreign worker fills a labour shortage, whether the employer has advertised the job for a minimum of 14 days on the national Job Bank, and whether wages offered are in line with what Canadians or permanent immigrants are getting for that work. There is much debate about how well the LMOs are conducted. A new LMO is required if a foreign worker wants to switch employers. Since April, employers can no longer ask to extend an existing LMO; they must apply for a new one. Pressure from employers led to three recent changes: the maximum amount of time for work permits was extended from one year to two years (for those in the Seasonal Agricultural Worker Program the maximum is eight months); foreign workers no longer have to leave the country for at least four months while their employers apply for a new LMO; and in Alberta and B.C., LMOs have been fast-tracked in 33 jobs – including carpenters, roofers, front-desk clerks in hotels, residential cleaners and sales clerks – and promised within five days.

The federal government is now proposing to cap the stay of foreign workers at

down a month earlier. No one bothered to tell them, or to notify the government to cancel their work permits. At least two of them are now working illegally in Toronto.

Others find themselves in positions similar to the 120 migrant workers at Rol-Land mushroom farm near Guelph, laid off last December when the recession hit. "Closed" work permits barred them from jobs with other employers. Thirty of them remained in Canada to face precarious prospects in the underground economy.

Unemployed temporary foreign workers add to the pressures on the city's own "guest workers," hit by the recession and an unemployment rate of 10 per cent.

The trend has intensified concern about a federal program that – virtually without debate – has almost doubled the number of workers entering Canada with temporary permits since 2003. They are here to fill labour shortages identified by employers and Ottawa.

Last year, 192,519 foreigners came with work permits of up to two years – almost as many as the permanent residents Canada selected through the immigration system.

According to an official count, on Dec. 1, 2008, there were 251,235 temporary foreign workers in the country.

The program is widely criticized for being poorly monitored and for leaving the workers vulnerable to exploitation. Some experts say it smacks of the failed guest worker programs in Europe, which developed generations of marginalized and resentful residents.

Employers, on the other hand, insist that regardless of the economy's ups and downs, labour shortages are real and longterm.

BUT IS THE Temporary Foreign Worker Program the best way to fill the need?

For many who study the program, the recession's impact on foreign workers has made that question more pressing.

When times were good, foreigners could renew work permits with the same employer or get federal approval to switch jobs. When times got bad, and domestic unemployment rose, the government began closing the tap on the program.

Human Resources and Skills Development Canada (HRSDC) must conduct labour market opinions (LMOs) when employers seek approval to hire workers abroad. LMOs are supposed to determine whether local citizens

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four years. After that, they would be barred for six years from re-entering the country. With low-skilled foreign workers – for jobs that require no more than a high school diploma or up to two years of on-the-job training – employers must sign a contract with the worker outlining wages and working conditions.

The contract must also note that the employer will pay for travel costs from the home country and back, will not recoup recruitment costs from the worker, will help the worker find suitable and affordable housing, and will provide medical coverage until the worker is eligible for provincial health coverage. But the federal government says the contract is governed by provincial labour laws and largely washes its hands of enforcement.

Taxes are deducted from their paycheques. But they're not eligible for welfare if laid off. They can receive unemployment insurance, but in practice, few who apply do. And in Alberta and Ontario, seasonal agricultural workers are barred from joining unions.

It's easier for high-skilled temporary workers to bring over their families while working in Canada than it is for those in low-skilled categories. High-skilled workers can also apply to become permanent residents under the Canadian Experience program, set up in 2008. Low-skilled workers can't.

Their best bet for permanent status is through Provincial Nominee Programs. Some allow low-skilled foreign workers in designated industries to be nominated for permanent residency by

or permanent residents could do the job. In 2008, HRSDC approved 176,368 positions with LMOs.

But the first three months of this year saw a 25 per cent reduction in the number of jobs approved with LMOs (29,607) from the same period last year (40,020).

LMOs rejected in the first half of this year included ones involving employers who wanted to renew work permits for those already on their payroll – forcing the employers to lay them off instead.

They also included employers prevented from hiring foreign workers already here and out of a job. (Workers can remain in Canada until their work visas expire, but can't legally work for another employer without a new LMO.)

For many jobless foreign workers, returning home isn't much of an option. They left lives of poverty, are often burdened by debt from money paid to recruiters, and have families back home who depend on remittances.

"For the average Canadian worker, the economic downturn is a crisis, but for the temporary foreign worker, it's a catastrophe," says Naveen Mehta, a lawyer with the United Food and Commercial Workers union.

Gauging the impact of foreign workers on the underground economy is difficult. Officials at Citizenship and Immigration Canada insist that the "vast majority" return home before their permits expire. But they can't prove it.

The government doesn't track when – or if – foreign workers leave the country. Nor does anyone track the number of those laid off. But it does advise employers to lay off foreign workers before Canadian citizens or permanent residents.

"We've got a growing illegal workforce," says Yessy Byl, an expert on the Temporary Foreign Worker Program in Alberta, the province that experienced the biggest increase of foreign workers in the past three years. "It's growing by leaps and bounds.

"You've got a hugely growing group of destitute people," adds Byl, who is also a labour lawyer with the Alberta Federation of Labour. "They have to work to survive."

Byl says the worst is yet to come: many of the 365,000 foreign workers who came to Canada in 2007 and 2008 will see their permits expire next year.

In a 2007 report, the RCMP estimated the number of undocumented workers in Canada ranged from 200,000

their employers. Ontario's program, set up last February, does not nominate low-skilled workers for permanent status. Live-in caregivers can apply for permanent status after two years of work.

– *Sandro Contenta*

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to 500,000. Toronto is widely seen as having the largest concentration.

St. Christopher House, a downtown social service agency, is bracing for an influx of underground foreign workers and has hired a new coordinator who recently completed doctoral studies on migrant workers.

"We are trying to get out in advance of that train coming down the track because we believe this issue is going to be big," says executive director Maureen Fair.

Francisco Rico-Martinez, co-director of Toronto's FCJ Refugee Centre, says every month he sees two or three temporary foreign workers looking for help. One week in September, he met Tony, the Alberta farm worker, and the Salvadoran couple from Halifax.

But settlement agencies are in a bind. The federal government doesn't fund services for guest workers. If agencies help, they're diverting scarce funds from refugees and landed immigrants.

HISTORICALLY, the Temporary Foreign Worker Program was a relatively small federal initiative that brought in mostly high-skilled workers for specialized

jobs. The live-in caregiver and seasonal agricultural worker programs were the only exceptions.

All that changed in 2002 when Ottawa allowed employers to bring in a wide range of low-skilled foreign workers to toil in the hospitality, food services, construction and manufacturing sectors.

Increases have been especially steep since 2006, under the Conservative government's watch.

"It's a priority of Stephen Harper's government to have immigration tailored more to the needs of Canadian employers," says Jeffrey Reitz, an immigration expert at the Munk Centre for International Studies.

The economy was hot, and employers – from Tim Hortons franchises to developers of Alberta's oilsands – scrambled to find workers. They turned to the Temporary Foreign Worker Program.

"They were doling out work permits like lollipops," says Toronto immigration lawyer Sergio Karas.

The most persistent criticism of the program is that it has addicted employers to cheap, disposable labour. In August, the federal government told a parliamentary committee that "overuse" of the program is the cause of many of its problems.

But it defended the program as necessary, noting that seasonal or cyclical jobs – vegetable picking or work on the oilsands – don't require permanent employees. The Harper government also described the regular immigration system as woefully inflexible and unable to meet labour market demands.

That system, which considers only workers with highly developed skills for permanent residency, is groaning under a backlog of some 900,000 applications. Decisions can take six years.

In 2007, at the peak of a revved-up economy, Canada let in 41,251 skilled workers as permanent residents – 17,660 fewer than in 2001. Meanwhile, 165,000 guest workers were brought in – the majority of them low-skilled.

"The temporary foreign worker program has become the faster and preferred way to get immigrants to Canada to meet long-term labour shortages," the bipartisan report of Parliament's Standing Committee on Citizenship and Immigration noted in May.

Some argue that the service industry is bringing in foreign workers to flip burgers, pour coffee and clean hotels simply to avoid offering the higher wages needed to attract domestic labour. What seems clear is that many are doing jobs few Canadians want – for example, dismembering pigs on "disassembly lines" in meat plants.

Yet, while high-skilled temporary workers can apply to become permanent residents under federal or provincial programs, most low-skilled workers can't (live-in caregivers are the big exception).

"The attitude is, 'We don't want none of them riff-raff here,'" Byl charges.

Governments are rejecting the kinds of people who largely built the country after immigrating in successive waves through the last century, says Toronto immigration lawyer Elizabeth Long.

"Good enough to work, good enough to stay," is a slogan widely used by advocates of giving low-skilled workers a route to permanent status.

The Harper government is doing the opposite. Immigration Minister Jason Kenney last month proposed changes that would cap at four years the amount of time foreigners could work in Canada on temporary permits. They then would be barred from receiving another permit for six years.

The proposals have been widely panned. The parliamentary committee had recommended a path to permanent residency for all guest workers, at least those already here. It also called for "open" permits that would allow workers to switch jobs in the same sector.

Observers say foreign workers are much less likely to leave Canada if they're allowed to stay four years, as Ottawa is proposing. As one slogan, based on the experience of Europe and the U.S., says: "There is nothing more permanent than temporary foreign workers."

Germany stopped recruiting guest workers in 1973. But many stayed and brought over their families. By the mid-1980s, the program was largely responsible for having increased the number of permanent immigrants in Germany by almost 4 million. Left without settlement services for years, many live marginalized lives.

Jenna Hennebry, a sociologist at Wilfrid Laurier University, has researched temporary foreign workers for years. She believes a majority who lose their jobs stay in Canada beyond the time allowed by their work visas.

Some get advice from consultants to apply for refugee status. That clogs up the system but buys them time to stay and work in Canada. Others become undocumented.

Last spring, the Canadian Border Services Agency launched raids at several farms in southern Ontario, detaining about 100 people who had overstayed or violated the conditions

of their work permits.

After one raid, about 40 workers from Thailand with expired work permits were sent to a detention centre in Rexdale. Immigration lawyer Long, who represented one of them, said most were deported without getting a chance to speak to a lawyer or file an assessment – guaranteed by the Charter of Rights – of the risk they faced if sent back.

Long said her client had borrowed \$17,000 from "loan sharks" in Thailand to pay recruiters. Yet he was paid far less money than promised to work an overnight shift six days a week catching free-range chickens. He, too, was eventually deported.

Union officials and immigration experts say the size of Toronto's undocumented workforce keeps official employer demands for temporary foreign workers in the city – other than nannies – relatively low.

"Why would an employer go through the hassle of a temporary foreign work visa when he can draw from that pool of undocumented workers?" says Diego Mendez, spokesperson for the Greater Toronto local of the Service Employees International Union.

Toronto immigration lawyer Amina Sherazee believes the growing pool of undocumented workers suits Ottawa just fine.

"It's almost a deliberate attempt ... on the part of the government to keep a competitive workforce here who can be exploited cheaply to meet the needs of the market," she says.

Rico-Martinez notes that undocumented workers make up half of his centre's caseload. "We try to talk to the government about this issue, but they're in total denial."

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