

Find Horoscopes, Comics, Crosswords and Sudoku

thestar.com Explore Our NEW Site



What's better than winning a night in Whistler during the 2010 Winter Games?

Click to find out.

\*Must be 19 years of age or older. No purchase necessary. See Contest Rules for details.



Wednesday, November 25, 2009 Toronto Edition

BETA

thestar.com

wheels.ca healthzone.ca yourhome.ca parentcentral.ca toronto.com

Search bar with thestar.com, Web find a business, advanced search, full text article archive

new links

Home News GTA Opinion Business Sports A & E Living Travel Columns Blogs More

Autos Careers Classifieds Deaths Real Estate

HOT TOPICS AFGHAN MISSION MAPLE LEAFS KING TUT SANTA CLAUS FUND ACTS OF KINDNESS UFC H1N1 FLU RAPTORS more

Home News Investigations

# Part 2: A temporary worker's Catch-22

## Temporary permits leave foreigners open to exploitation

Sandro Contenta  
Laurie Monsebraaten  
Staff Reporters

Article Photos (1)

Published On Mon Nov 02 2009

Email Print Republish Report an error Share Facebook Twitter YouTube

In Mumbai, Mac Akela was a top chef at a luxury hotel, running a department of 72 people and preparing meals for the rich and powerful. Life was good. He had a wife and three children. And his \$15,000 yearly salary got him far, particularly with the rent-free home his employer provided.



Mac Akela, who cannot be shown for legal reasons, has been forced to work illegally after abuse by employers.

LUCAS OLENIUK/TORONTO STAR

One day, a visiting Toronto restaurateur fell in love with Akela's cuisine. He offered him twice his salary, and by November 2007, Akela was cooking up a storm in a north Toronto restaurant. Six months later, he was broke and living in a homeless shelter.

He blames much of his downfall on Canada's controversial Temporary Foreign Worker program. It tied him to his Toronto job, preventing him from working for anyone else, even when his employer swindled him out of half his promised salary.

Asking for his money got Akela fired and kicked out of his employer-owned, one-bedroom apartment, which he shared with two other workers for \$400 a month. That set him on an 18-month ordeal of government red tape, largely illegal work and more abuse from employers.

"I am fed up," says Akela, who fears being deported and asked that his real name be withheld. "I came to this country with big dreams. I used to be treated with respect back home. Here it's nothing but lying and cheating."

- Advertisement -

Advertisement for GMC Holiday Gift featuring a Pontiac G3 Wave SE with a cash purchase price of \$13,778 and 0% financing for 36 months.

### Popular

### Stories

- Bullets fly over Canadian-owned mine
- MPs told of gang rapes at mine

### Ads by Google

#### Hire Foreign Workers

Solve Labour Shortages Now  
Hospitality, Retail, Oil and Gas  
www.diamondglobal.ca

#### Temporary Staffing

Cost Effective Staffing Solution  
Reliable and Qualified Personnel  
www.SgbWorkforce.com

#### Canada immigration lawyer

All areas of Immigration Law  
Canadian Visas, Appeal Cases

"I thought Canada was a fair country," he adds.

Fair isn't a word commonly used to describe Canada's controversial program for foreigners working here temporarily. It's widely criticized for being poorly monitored and for leaving workers vulnerable to abuse.

Canada's auditor general, Sheila Fraser, issues a report Tuesday that, in part, will examine how the government manages the program.

Virtually without debate, successive federal governments almost doubled the number of foreigners coming to Canada with temporary work permits since 2003. Last year, more than 192,000 came in – almost as many as the permanent residents Canada selected through the immigration system.

On Dec. 1, 2008, Ottawa counted 251,235 foreigners in Canada with valid temporary work permits, many of which can last two years. The workers come to fill labour shortages identified by employers and Human Resources and Skills Development Canada (HRSDC).

Officials at the department say they reduced the influx when the recession hit and unemployment rose above 8 per cent nationally. But employers insist labour shortages are long-term, and the Conservative government is committed to keeping the "guest worker" program.

There is widespread concern, however, that protection for migrant workers has not kept pace with the program's rapid expansion. The anxiety is over low-skilled workers, who toil in jobs requiring no more than a high school education. They're the majority of migrant workers to Canada.

Often ignorant of Canadian labour laws, they're left vulnerable by a federal government that washes its hands of enforcing program regulations and provinces that have been slow to wake up to the abuses many suffer, advocates and union officials say.

Stories of recruiters gouging migrant workers with fees of up to \$10,000 are well known. Yet Ontario is proposing to ban those fees solely for nannies, who make up less than a third of the 66,600 guest workers who came to the province in 2008. In Alberta, where recruitment fees are banned for all migrant workers, the province is investigating more than 280 complaints against agencies, most for charging fees.

Abusive employers are a minority. But mistreatment doesn't just happen in "mom and pop" businesses.

In April 2007, two Chinese workers on a \$10.8 billion oil sands project were killed when the roof of an oil storage tank collapsed. The site, north of Fort McMurray, Alta., is owned by Canadian Natural Resources Ltd.

The victims and 130 other Chinese on temporary permits, were working for SSEC Canada Ltd., owned by China's Sinopec Shanghai Engineering Company Ltd. Last April, the Alberta government laid 53 charges against the three companies under the Occupational Health and Safety Act.

It was also discovered that SSEC paid the foreign workers just 10 per cent of the \$34 hourly rate specified in the union contract. Canadian Natural Resources Ltd. has since agreed to hand over \$3.17 million and provincial officials are trying to find the workers, now back in China, to give them the money.

Also well documented are examples of migrant workers having their passports seized by employers while earning lower wages and working longer hours than promised.

Yet only last month did the federal government propose to blacklist abusive employers and deny them foreign workers for two years. Until that becomes law, the federal official in charge of the program suggests Ottawa is powerless.

Last year, a parliamentary committee asked whether the government could deny "labour market opinions" – needed to hire workers from abroad – if employers mistreated foreign workers in the past.

"To the best of my knowledge, at this point we don't have the authority to assess past performance when we're checking on new labour market opinions," replied Andrew Kenyon, head of the temporary foreign worker program at HRSDC.

This didn't stop the department fast-tracking approvals in 33 job categories – including roofers and sales clerks – for migrants to Alberta and British Columbia in the fall of 2008.

HRSDC officials declined a request for an interview for this story. In an email response to questions, they contradicted Kenyon. A "more systematic" way to withhold foreign worker permits from abusive employers is being put in place, they said. They also noted initiatives that "encourage" employers to attest they're complying with regulations.

In an information sheet for employers, HRSDC notes it has "no authority to intervene in the employer-employee relationship or to enforce the terms and conditions of employment. It is the responsibility of the employer and worker to familiarize themselves with laws that apply to them and to look after their own interests."

Advocates say that's outrageous, given the power employers have over foreign workers here temporarily. The result is vulnerable workers fearing deportation and sometimes suffering in silence.

Last May, the bipartisan report of Parliament's Standing Committee on Citizenship and Immigration called for "open" temporary permits that would allow migrant workers to switch jobs in the same sector.

It's not a move popular with employers, who spend money recruiting and training migrant workers. They already complain that it's too easy for other employers to poach their guest workers.

Francisco Rico-Martinez, co-director of Toronto's FCJ Refugee Centre, says employers are increasingly recruiting from countries where workers are considered more desperate and so more pliant.

"It's a nasty concept they're applying: Take the most vulnerable and they will obey better the rules," Rico-Martinez charges.

He insists that explains the rise in the number of workers coming from Guatemala – from 13 in 2002 to 3,303 in 2008. There, the International Organization for Migrants, a multi-government agency that includes Canada, charges recruits \$500. They lose the money if they remain in Canada illegally.

Guatemalans are also getting the message that if they don't return, their relatives, their village or even their country will be banned from accessing Canada through the migrants' program, adds Rico-Martinez, who works widely in Latin America and has interviewed temporary workers heading to Canada.

It's impossible to know how many employers are abusive because enforcement usually depends on complaints. And guest workers are often too afraid to speak out.

Akela did. A shelter worker helped him take his complaint of unpaid wages to the Ontario Labour Relations Board in May 2008. It was settled when the restaurateur paid him about \$2,000, some \$6,500 less than what he was owed.

"There is no incentive for employers to obey the law, because if they are caught, they are rarely penalized," says Deena Ladd of the Workers' Action Centre in Toronto.

Akela, 43, boasts a repertoire of more than 400 dishes, from Tandoori and Mughlai to Asian-Italian fusion.

"I'm an artist," he says. "I have my own creations."

He came to Canada with the hope of one day becoming a permanent resident and opening a restaurant of his own. The plan got off to a shaky start. The restaurateur who brought him here insisted on paying him cash, leaving no official proof he was working and paying taxes.

Stunned at being fired and thrown out of his apartment, he wandered the streets for two nights, before entering the homeless shelter where he still lives. Akela quickly found a new employer and started working again. But this second restaurateur balked at getting government approval to hire him legally. Akela tried to do it himself. He paid an immigration lawyer \$1,470 to file the application. But when he checked with HRSDC six months later, he discovered the lawyer had filed no papers.

He had arrived in Canada with a one-year work permit. This was about to expire. Then Akela answered an ad last fall for a new restaurant downtown. The owner got government approval to hire a migrant chef, gave Akela the job, and said he would help renew his work visa.

He began work last January and was paid \$3,000 a month, but it was also in cash. Then Akela's OHIP expired. To renew it, he needed a work visa. He says the employer wouldn't give it to him. One thing led to another and in April, Akela was fired – again.

He doesn't know what to think. One minute he believes the employer withheld his work visa to prevent him from working with a competitor. The next, he wonders if the employer ever obtained it.

He tried to get Immigration Canada to issue him a copy but got nowhere. With a family in India to support, Akela reluctantly joined Toronto's growing pool of underground workers.

He worked three weeks at a fourth restaurant, but says he wasn't paid. A fifth restaurant promised better. But after two weeks on the job, Akela slipped on a wet floor and smashed his elbow, landing him in hospital with no OHIP coverage. Medical help cost him \$150.

He was off work for almost two months. He's now back on the job, undocumented, with a sixth restaurant. He's turned to Toronto immigration lawyer Elizabeth Long for help getting some kind of status.

"My daughter is 7 years old," he says, shaking his head. "When I left she was 5. I am missing her. I should be preparing to bring them here by now. But everything is in ruins."

Also see:

Exclusive: Early recall 'blindsided' Stork Craft CEO  
Harper speaks up on Afghan detainees