

Federal Court



Cour fédérale

Date: 20211203

Docket: IMM-3771-20

Citation: 2021 FC 1350

Ottawa, Ontario, December 3, 2021

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

TUFOR HOLDINGS LTD.

Applicant

and

**THE MINISTER OF EMPLOYMENT AND
SOCIAL DEVELOPMENT CANADA**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of a Program Officer of Employment and Social Development Canada [ESDC] dated August 11, 2020, refusing the Applicant's request for a positive Labour Market Impact Assessment [LMIA].

[2] An employer in Canada may be required to obtain a positive LMIA before hiring a foreign worker. A positive LMIA shows that there is a need for a foreign worker to fill the job and that no Canadian worker or permanent resident is available to do the job.

[3] The LMIA requirement is governed by subsections 203(1) and (3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, which is reproduced at Annex A. EDSC has also published guidelines entitled “Program requirements for low-wage positions” [the Program Requirements] which contains two sections relevant to this application: “Minimum recruitment requirements” and “Proof of advertising” which are reproduced at Annex B.

[4] In March 2020, the Applicant, Tufor Holdings Ltd, applied for a LMIA for a food service supervisor position at its restaurant in Surrey, British Columbia. It provided a number of documents, including proof of recruitment efforts.

[5] On June 16, 2020, the Applicant was informed by the Officer that, as a result of the COVID-19 pandemic, changes had been made to the assessment criteria. Employers were now required to confirm that workers would still be able to perform their duties despite local restrictions. Furthermore, employers were required to re-advertise any job advertisements posted prior to March 15, 2020, due to the increase in the Canadian unemployment rate.

[6] The Applicant confirmed that its restaurant was still operational and indicated that it did not foresee any changes to the foreign worker’s role. The Applicant also informed the Officer that it had been actively running job advertisements between March 2020 and June 2020. The

Applicant provided the Officer with its advertisements as faxed to the external organizations that posted them along with confirmations that the faxes had been received.

[7] On June 30, 2020, the Officer indicated that there were issues with the advertisements, as they did not properly indicate the terms of employment. It appears that the issue was that the advertisements did not indicate that the position was full time. The Officer requested that the Applicant update the advertisements and post them for at least two weeks. The Officer also requested that the Applicant provide actual copies of the advertisements as they appeared on the sites of the posting organizations.

[8] On July 21, 2020, the Officer emailed the Applicant and indicated that, because the employment was in the low wage stream, the Officer's concerns were with respect to advertising to two underrepresented groups. This "requirement" is set out in the minimum recruitment requirements section of the Program Requirements, which is reproduced as it appears in the original:

[Y]ou must also conduct **at least 2** additional methods of recruitment that are consistent with the occupation (targets an audience that has the appropriate education, professional experience and or skill level required for the occupation. Effective august 28, 2017, each of the methods used must target a different underrepresented group: Indigenous persons, vulnerable youth, newcomers, and persons with disabilities.

[V]ous devez également avoir recours à **au moins 2** méthodes additionnelles de recrutement conformes à la pratique d'affichage des offres d'emploi pour cette profession (qui cible un public qui a une formation, une expérience professionnelle ou un niveau de compétences appropriés pour le poste). Depuis le 28 août 2017, chacune des méthodes utilisées doit cibler un groupe sous-représenté : Autochtones, jeunes vulnérables, nouveaux

arrivants et personnes
handicapées.

[9] The Officer requested copies of advertisements from the actual websites of Métis Nation and Open Door Group, the organizations with whom the Applicant claimed to be advertising. The Officer indicated that if this was not possible, the Applicant should explain why.

[10] On July 29, 2020, the Officer emailed the Applicant and indicated she still had concerns regarding the advertisements and needed to see them. The Officer told the Applicant:

I need to see the advertisements. If you are unable to print the advertisements I can accept a web link from your Employer account, providing [*sic*] the web link leads me to the advertisement, otherwise I will be refusing the application.

[11] The Officer once again provided a link to the Program Requirements. The Officer stated that the links to the advertisements were required by the end of the next day.

[12] Later that day, the Applicant provided the Officer with a summary of its advertising efforts. The Applicant provided:

- an email exchange with Pacific Community Resources with a copy of the job advertisement that was sent to it;
- a copy of the job advertisement faxed to Open Door Group along with evidence demonstrating that the fax had been received at Open Door Group's fax number;
- a copy of the job advertisement faxed to Métis Nation along with evidence demonstrating that the fax had been received at Métis Nation's fax number;

- a statutory declaration indicating efforts had been made to contact Open Door Group to confirm the job advertisement had been posted but there was no response; and
- a statutory declaration indicating that the Applicant had contacted Métis Nation to confirm the job advertisement had been posted and that a representative of Métis Nation confirmed that the advertisement had been posted but was unable to send a confirmation email to that effect.

[13] On August 11, 2020, the Applicant was informed that it had received a negative LMIA. The Officer's decision is brief. It simply informs the Applicant that the LMIA resulted in a negative decision due to "[i]nsufficient efforts to hire Canadians/PRs."

[14] I accept the submission of the Respondent that the Officer's notes [the Notes], provided as part of the certified tribunal record, are to be considered to be part of her reasons.

[15] The Notes are structured according to the Regulations. The Notes confirm that the Applicant was successful in all aspects of its application except for consideration of the factor set out in paragraph 203(3)(e) of the Regulations: "whether the employer will hire or train Canadian citizens or permanent residents or has made, or agreed to make, reasonable efforts to do so."

[16] In the Notes, under the heading "Labour Market Factors – e", subheading "Advertisement" the Officer wrote:

The information provided in the form of fax confirmation sheets and attestations confirming that the advertising was sent to the respective agencies does not confirm that the advertisements were

indeed posted according to program requirements. There are issues with the posting duration/dates because they did not provide copies of the advertisements as presented to the public or confirmation from the agencies that the advertising took place for the appropriate time period. Due to the issues surrounding the advertisements it could not be determined that the Employer advertised targeting under-represented groups.

[17] Under the subheading “Summary of Efforts to Hire or Train Canadians or Permanent Residents assessment” the Officer wrote:

Based on a review of the information and supporting documents, the employer has not demonstrated reasonable efforts to hire or train Canadians or permanent residents, because they have not demonstrated advertising focused on two underrepresented groups as outlined for low wage stream positions. The Job Bank or its provincial/territorial counterpart requirements for the position requested by the employer have been verified and there are no issues.

[emphasis added]

[18] The Notes also outline the Officer’s email correspondence with the Applicant. The Officer noted that on July 29, 2020, she “confirmed what was needed in order to assess the application in relation to advertisements and suggested a website link.” Later that evening, the Applicant “provided rationale surrounding the advertising attempts” but the Officer noted that “[n]o website links were provided as suggested by the Program Officer and duration could not be determined.” The final narrative note indicates that the Officer was “not satisfied with [the] rationale as many other sites could have been chosen to advertise for the additional two week period offered to Employers.”

[19] The Applicant identified and made submissions on two issues: (1) whether the Officer's decision is reasonable, and (2) whether the Officer fettered her discretion.

[20] These identified issues overlap because a decision that is the product of fettered discretion is *per se* unreasonable: see *Setmijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 at para 24. For this reason, I prefer to focus my analysis on the issue of whether the Officer fettered her discretion when making the decision under review.

[21] The Applicant submits that the Officer fettered her discretion by treating the advertising to underrepresented groups as mandatory. It submits that the proper question is that set out in paragraph 203(1)(b) of the Regulations, namely whether "the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada." The Applicant submits that subsection 203(3) of the Regulations sets out seven factors that must be taken into consideration "with respect to the matters referred to in paragraph (1)(b)." Minimum advertising requirements do not appear in this list of factors; they appear only in the Program Requirements. Moreover, this "requirement" in the Program Requirements is stated to go to whether the employer has demonstrated "reasonable efforts" to hire citizens or permanent residents as set out in paragraph 203(3)(e) of the Regulations.

[22] The Respondent agrees that a decision-maker cannot apply a guideline as if it were law and may not limit their discretion by declining to consider other relevant factors: see

Thamotharen v Canada (Minister of Citizenship and Immigration), 2007 FCA 198

[*Thamotharen*]. However, the Respondent says that a decision-maker may consider guidelines in

exercising their discretion as long as they are applied in a manner that permits departures where warranted: see *Frankie's Burgers Lougheed Inc v Canada (Minister of Employment and Social Development)*, 2015 FC 27 [*Frankie's Burgers*] at para 92.

[23] The Respondent notes that, in her July 21, 2020, email to the Applicant, the Officer requested an explanation why the Applicant could not provide proof that the job posting had been advertised to underrepresented groups. The Officer then noted that the explanation was unsatisfactory. In the Respondent's submission, this demonstrates that the Officer accounted for the Applicant's specific circumstances when making her determination.

[24] Fettering of discretion occurs when a decision-maker treats optional guidance as binding. In *Thamotharen* at para 62, the Federal Court of Appeal held that:

[W]hile agencies may issue guidelines or policy statements to structure the exercise of statutory discretion in order to enhance consistency, administrative decision makers may not apply them as if they were law. Thus, a decision made solely by reference to the mandatory prescription of a guideline, despite a request to deviate from it in the light of the particular facts, may be set aside, on the ground that the decision maker's exercise of discretion was unlawfully fettered.

[25] A series of decisions involving LMIA decisions and alleged fettering of discretion were placed before the Court.

[26] The Respondent relies on *Frankie's Burgers*, above, a decision by Chief Justice Crampton. In that case, the applicants argued that the officer fettered her discretion by refusing the applications on the basis that that the advertisements did not contain the business addresses

of the workplaces. Chief Justice Crampton at para 93 acknowledged the large volume of applications that must be processed and found that:

In this context, it is not reasonable to expect that the ESDC should explain why departures from the Guidelines are not made, unless the particular circumstances of an applicant's case are such that it would be reasonable for such a departure to have been given serious consideration.

[27] Chief Justice Crampton noted that the officer's notes and her affidavit evidence indicated that each file is assessed on its own merits and that variations on the requirements set out in the guidelines are considered. Chief Justice Crampton did note, however, that it would be preferable if the guidelines more clearly indicated that departure from them may be made in appropriate circumstances and stated at paragraph 101 that officers "would be well advised to avoid using language that may suggest that the Guidelines are binding in all circumstances."

[28] The Applicant relies on *Canadian Reformed Church of Cloverdale BC v Canada (Minister of Employment and Social Development)*, 2015 FC 1075 [*Reformed Church*]. There, an officer made a negative decision on a LMIA based on the applicant's failure to include its business address in its job advertisement despite being told by the officer that this was a mandatory requirement. However, the applicant's website listed its address and the advertisements typically included map links to the place of work. Justice O'Reilly found that the officer had fettered her discretion. It was clear that the lack of a business address on the advertisements was the sole reason that the assessment was negative.

[29] In *Charger Logistics Ltd v Canada (Minister of Employment and Social Development)*, 2016 FC 286 [*Charger Logistics*], an officer reached a negative decision on a LMIA application.

The applicant argued, *inter alia*, that the officer had fettered his discretion by focusing on the minimum advertising requirements and not paragraph 203(3)(e) of the Regulations. Justice Southcott found that while the officer's analysis focused on advertising efforts, it did not amount to a fettering of his discretion. When the officer identified that there was a gap in the applicant's Job Bank advertisement, he asked for other advertisements that had been run in the lead up to the decision. At paragraph 21, he found that this showed that the Officer "was not slavishly following the requirements" of the guidelines.

[30] At least two relevant propositions can be gleaned from these cases.

[31] First, as set out in *Frankie's Burgers*, an officer is not generally required to discuss why departure from the Program Requirements is not warranted in a case. However, it is also clear from the jurisprudence that the officer's discretion will be found to be unduly fettered where it is clear that the officer considered the Program Requirements to be mandatory or applied them as such.

[32] Second, *Thamotharen* at para 62 makes it clear that it would be unreasonable to expect an officer to consider deviating from the Program Requirements without a request to do so from the Applicant. Here, the Applicant did make it clear in its emails with the Officer that its position was that it had gone "above and beyond" to try and recruit citizens and permanent residents, and it provided submissions on why it was unable to provide the specific documentation that the Officer requested. In my view, this was a request to excise some flexibility in the application of the Program Requirements.

[33] I conclude that the record before the Court establishes on the balance of probabilities that the Officer viewed the Program Requirements Guidelines as mandatory. Instead of considering the overall question of whether the employer had made reasonable efforts to hire Canadian citizens or permanent residents (pursuant to paragraph 203(3)(e) of the Regulations), she only considered whether the advertising met the specific targeting and duration expectations set out in the Program Requirements. Neither of these are factors set out in the Regulations; they are simply tools to be used in assessing an employer's recruitment efforts.

[34] I rely on the following statements from the Notes and the Officer's correspondence with the Applicant in reaching this conclusion:

- In the Notes, under the heading "Summary of Efforts to Hire or Train Canadians or Permanent Residents assessment", the Officer wrote that "the employer has not demonstrated reasonable efforts to hire or train Canadians or permanent residents, because they have not demonstrated advertising focused on two underrepresented groups as outlined for low wage stream positions" [emphasis added].
- In her June 30, 2020 email to the Applicant, the Officer refers the Applicant to "the advertisement requirements for content" and makes it clear that she would not be considering the advertisements unless they comply with these requirements.
- In her July 29, 2020 email, the Officer tells the Applicant that it "needs to demonstrate that advertising to two specific under-represented groups has taken place. I need to see your advertisements....otherwise I will be refusing the application" [emphasis added].

- The Officer repeatedly told the Applicant to comply with the Program Requirements which, as noted by Chief Justice Crampton in *Frankie's Burgers*, do not indicate that departure may be warranted in certain circumstances.

[35] The first example, from the Officer's Notes, is particularly telling. The Officer makes it clear that the reason that she is of the opinion that reasonable efforts were not demonstrated is solely because of the failure to provide advertising to underrepresented groups in the manner set out in the Program Requirements. This is very similar to the circumstances in *Reformed Church*, where it was clear that the sole reason for the negative decision was a failure to comply with a particular aspect of the Program Requirements.

[36] I acknowledge that in her July 21, 2020 email, the Officer says that failure to meet the Program Requirements "can impact the outcome of the application" [emphasis added], as opposed to "will". However, this passing comment does not detract from the examples above.

[37] The Respondent submits that the Officer's request for an explanation as to why the actual advertisements could not be provided demonstrates that she was not blindly following the guidelines. I agree that this request appears to demonstrate flexibility on the part of the Officer. However, this merely demonstrates a willingness to be flexible on the evidence that could establish that the advertisements were posted and for the required duration. It does not demonstrate a willingness to be flexible as to how the Applicant could demonstrate reasonable recruitment efforts. There was no flexibility as to whether the Applicant's cumulative efforts

could also demonstrate reasonable attempts at recruitment despite not complying with the Program Requirements.

[38] The facts of this case are distinguishable from those in *Charger Logistics*. In that case, the officer was willing to accept evidence of additional job postings as a way of dispensing with the expectation in the Program Requirements that the Job Bank posting be for a specific duration. The officer accepted non-compliant advertisements in order to inform an assessment of total recruitment efforts. In this case, the Officer did not budge on the requirement that advertising be targeted to underrepresented groups or for the specific duration. Her response to the Applicant's failure to provide this evidence was to suggest that the Applicant ought to have posted the job advertisements with different organizations targeting underrepresented groups. Her proposed solution was for the Applicant to meet the Program Requirements in a different manner. Again, this demonstrates a focus on strict adherence to the Program Requirements.

[39] There was evidence before the Officer of advertising efforts, including to underrepresented groups, leading up to the original application date, as well as of advertising efforts to the public at large between March and June 2020. The Applicant also provided a statutory declaration indicating that Métis Nation had posted the advertisement. While there was no indication of duration in this declaration, there was evidence that advertising had in fact occurred, just not in strict compliance with the Program Requirements.

[40] All of this evidence may still not have been enough to satisfy the Officer that the Applicant had made reasonable efforts to hire citizens or permanent residents. However, this

was not the analysis done by the Officer. Instead, the Officer only considered whether the Program Requirements had been met. In so doing, the Officer treated compliance with the Program Requirements as necessary to demonstrate reasonable efforts, instead of merely being sufficient. This was an unlawful fettering of her discretion, rendering the decision unreasonable.

[41] It seems to me that the Officer was not set up to succeed in her assessment. She was tasked with considering the application in accordance with a set of guidelines that purport to be “requirements.” As noted by the Chief Justice in *Frankie’s Burgers* at para 101, the Program Requirements “could be much clearer in their flexible application” and it would be helpful if they included an explicit statement that departures may be made in appropriate circumstances. Furthermore, the fields on the officers’ assessment forms, while structured according to the Regulations, include questions making reference to criteria found in the Program Requirements and there is no section directing officers to consider whether there are other factors that may be relevant in determining whether reasonable advertising efforts have been made.

[42] Cumulatively, these elements, embedded in the structure of the assessment process, strongly imply that the Program Requirements should be treated as mandatory. It is beyond my authority to order the Respondent to rename the Program Requirements or to make other structural changes to encourage a more flexible application. However, the Respondent ought to consider taking steps to clarify the role of the Program Requirements as guidance and not law. Doing so might reduce the amount of litigation and costs caused by the document as it is currently drafted.

[43] Neither party proposed a question for certification.

JUDGMENT IN IMM-3771-20

THIS COURT'S JUDGMENT is that this application is allowed, the Labour Market Impact Assessment application is to be decided by a different decision-maker, and no question is certified.

"Russel W. Zinn"

Judge

ANNEX A

Immigration and Refugee Protection Regulations, SOR/2002-227

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

Assessment of employment offered**Appréciation de l'emploi offert**

203 (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(c)(i) to (ii.1), an officer must determine, on the basis of an assessment provided by the Department of Employment and Social Development, of any information provided on the officer's request by the employer making the offer and of any other relevant information, if

203 (1) Sur présentation d'une demande de permis de travail conformément à la section 2 par tout étranger, autre que celui visé à l'un des sous-alinéas 200(1)c)(i) à (ii.1), l'agent décide, en se fondant sur l'évaluation du ministère de l'Emploi et du Développement social, sur tout renseignement fourni, à la demande de l'agent, par l'employeur qui présente l'offre d'emploi et sur tout autre renseignement pertinent, si, à la fois :

(a) the job offer is genuine under subsection 200(5);

a) l'offre d'emploi est authentique conformément au paragraphe 200(5);

(b) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

b) le travail de l'étranger est susceptible d'avoir des effets positifs ou neutres sur le marché du travail canadien;

(c) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

c) la délivrance du permis de travail respecte les conditions prévues dans l'accord fédéral-provincial applicable aux employeurs qui embauchent des travailleurs étrangers;

(d) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

d) s'agissant d'un étranger qui cherche à entrer au Canada à titre d'aide familial :

(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,

(i) il habitera dans une résidence privée au Canada et y fournira sans supervision des soins à un enfant ou à une personne âgée ou handicapée,

(ii) the employer will provide the foreign national with adequate furnished and private

(ii) son employeur lui fournira, dans la résidence, un logement privé meublé qui est adéquat,

accommodations in the household,
and

(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(e) the employer

(i) during the period beginning six years before the day on which the request for an assessment under subsection (2) is received by the Department of Employment and Social Development and ending on the day on which the application for the work permit is received by the Department, provided each foreign national employed by the employer with employment in the same occupation as that set out in the foreign national's offer of employment and with wages and working conditions that were substantially the same as — but not less favourable than — those set out in that offer, or

(ii) is able to justify, under subsection (1.1), any failure to satisfy the criteria set out in subparagraph (i).

[...]

Factors — effect on labour market

(3) An assessment provided by the Department of Employment and Social Development with respect to the matters referred to in paragraph (1)(b) shall, unless the employment of the foreign national is unlikely to have a positive or neutral effect on the labour market in Canada as a result of the

(iii) son employeur possède les ressources financières suffisantes pour lui verser le salaire offert;

e) l'employeur, selon le cas :

(i) au cours de la période commençant six ans avant la date de la réception, par le ministère de l'Emploi et du Développement social, de la demande d'évaluation visée au paragraphe (2) et se terminant à la date de réception de la demande de permis de travail par le ministère, a confié à tout étranger à son service un emploi dans la même profession que celle précisée dans l'offre d'emploi et lui a versé un salaire et ménagé des conditions de travail qui étaient essentiellement les mêmes — mais non moins avantageux — que ceux précisés dans l'offre,

(ii) peut justifier le non-respect des critères prévus au sous-alinéa (i) au titre du paragraphe (1.1).

[...]

Facteurs – effets sur le marché du travail

(3) Le ministère de l'Emploi et du Développement social fonde son évaluation relative aux éléments visés à l'alinéa (1)b) sur les facteurs ci-après, sauf dans les cas où le travail de l'étranger n'est pas susceptible d'avoir des effets positifs ou neutres sur le marché du travail canadien en raison de l'application du paragraphe (1.01) :

application of subsection (1.01), be based on the following factors:

(a) whether the employment of the foreign national will or is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;

(b) whether the employment of the foreign national will or is likely to result in the development or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;

(c) whether the employment of the foreign national is likely to fill a labour shortage;

(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;

(e) whether the employer will hire or train Canadian citizens or permanent residents or has made, or has agreed to make, reasonable efforts to do so;

(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute; and

(g) whether the employer has fulfilled or has made reasonable efforts to fulfill any commitments made, in the context of any assessment that was previously provided under subsection (2), with respect to the matters referred to in paragraphs (a), (b) and (e).

a) le travail de l'étranger entraînera ou est susceptible d'entraîner la création directe ou le maintien d'emplois pour des citoyens canadiens ou des résidents permanents;

b) le travail de l'étranger entraînera ou est susceptible d'entraîner le développement ou le transfert de compétences ou de connaissances au profit des citoyens canadiens ou des résidents permanents;

c) le travail de l'étranger est susceptible de résorber une pénurie de main-d'œuvre;

d) le salaire offert à l'étranger correspond aux taux de salaires courants pour cette profession et les conditions de travail qui lui sont offertes satisfont aux normes canadiennes généralement acceptées;

e) l'employeur embauchera ou formera des citoyens canadiens ou des résidents permanents, ou a fait ou accepté de faire des efforts raisonnables à cet effet;

f) le travail de l'étranger est susceptible de nuire au règlement d'un conflit de travail en cours ou à l'emploi de toute personne touchée par ce conflit;

g) l'employeur a respecté ou a fait des efforts raisonnables pour respecter tout engagement pris dans le cadre d'une évaluation précédemment fournie en application du paragraphe (2) relativement aux facteurs visés aux alinéas a), b) et e).

ANNEX B

Employment and Social Development
Canada, *Program requirements for low-wage
positions*

Recruitment

Recruitment is the process of finding and selecting qualified employees. As part of the Temporary Foreign Worker Program requirements, you must conduct recruitment efforts to hire Canadians and permanent residents before offering a job to a temporary foreign worker.

Note:

Due to economic impacts such as higher unemployment rates resulting from COVID-19, recruitment and advertisement requirements have been updated. Recruitment efforts are required to take place under the current labour market to ensure Canadians and Permanent Residents continue to be considered first for available jobs. This update applies to pending LMIA's received prior to June 15, 2020, and includes the following:

- Any ads posted before March 15, 2020 may need to be re-posted for an additional two consecutive weeks.
- If applicable, Service Canada will contact you regarding re-advertising requirements
- When re-advertising, employers must also meet all the minimum recruitment requirements described below.

Minimum recruitment requirements

Before applying for a Labour Market Impact Assessment, you must conduct at least 3 different recruitment activities:

Emploi et Développement social Canada,
*Exigences du Programme pour les postes à bas
salarie*

Recrutement

Le recrutement est un processus visant à trouver et à sélectionner des employés qualifiés. Conformément aux exigences du Programme des travailleurs étrangers temporaires, vous devez déployer des efforts pour recruter des Canadiens et des résidents permanents avant d'offrir un emploi à des travailleurs étrangers temporaires.

Note:

En raison des impacts économiques tels que les taux de chômage plus élevés résultant de COVID-19, les exigences en matière de recrutement et d'affichage ont été mises à jour. Des efforts de recrutement doivent être faits dans le cadre du marché du travail actuel pour s'assurer que les Canadiens et les résidents permanents continuent d'être considérés en premier pour les emplois disponibles. Cette mise à jour s'applique aux EIMT en attentes reçues au plus tard le 15 juin 2020 et comprend ce qui suit :

- Toute annonce affichée avant le 15 mars 2020 pourrait avoir besoin d'être affichée à nouveau pendant deux semaines consécutives.
- S'il y a lieu, Service Canada communiquera avec vous au sujet des exigences du réaffichage.
- Lors du réaffichage, les employeurs doivent également satisfaire à toutes les exigences minimales de recrutement décrites ci-dessous.

Exigences minimales de recrutement

Avant de présenter une demande d'Évaluation de l'impact sur le marché du travail, vous devez entreprendre au moins 3 activités de recrutement :

- effective August 28, 2017, you must advertise on the Government of Canada's Job Bank. If you choose to use an alternative method, you must submit a written rationale and explanation
- you must also conduct **at least 2** additional methods of recruitment that are consistent with the occupation (targets an audience that has the appropriate education, professional experience and or skill level required for the occupation). Effective August 28, 2017, each of the methods used must target a different underrepresented group: Indigenous persons, vulnerable youth, newcomers, and persons with disabilities
- depuis le 28 août 2017, vous devez afficher les emplois sur Guichet-Emplois du gouvernement du Canada. Si vous décidez d'utiliser une autre méthode, vous devez soumettre une justification écrite expliquant le choix de cette méthode alternative.
- vous devez également avoir recours à **au moins 2** méthodes additionnelles de recrutement conformes à la pratique d'affichage des offres d'emploi pour cette profession (qui cible un public qui a une formation, une expérience professionnelle ou un niveau de compétences appropriés pour le poste). Depuis le 28 août 2017, chacune des méthodes utilisées doit cibler un groupe sous-représenté : Autochtones, jeunes vulnérables, nouveaux arrivants et personnes handicapées.

Vulnerable youth is defined as young people who face barriers to employment, developing basic employability skills and gaining valuable job experience to assist them in making a successful transition into the labour market or to return to school. These barriers for youth may include but are not limited to: challenges faced by recent immigration youth, youth with disabilities, lone parent youth, youth who have not completed high school, Indigenous youth, and youth living in rural or remote areas.

[...]

Proof of advertising

You must demonstrate that you have made efforts to recruit qualified Canadians and permanent residents by providing these documents as proof of advertisement with your application:

La notion de « jeunes vulnérables » désigne les jeunes qui doivent surmonter des obstacles à l'emploi, au perfectionnement des compétences de base en matière d'employabilité et à l'acquisition d'expérience professionnelle enrichissante, soit des éléments qui les aideraient à effectuer une transition réussie vers le marché du travail ou un retour aux études. Ces obstacles peuvent comprendre, sans toutefois s'y limiter, les défis auxquels sont confrontés les jeunes nouveaux immigrants, les jeunes handicapés, les jeunes parents seuls, les jeunes qui n'ont pas terminé leurs études secondaires, les jeunes Autochtones, et les jeunes qui vivent en région rurale ou éloignée.

[...]

Preuve d'affichage de poste

Vous devez fournir ces documents avec votre demande à titre de preuve d'affichage pour démontrer que vous avez déployé des efforts pour recruter des Canadiens et des résidents permanents :

- a copy of the advertisement and information to support **where, when** and for **how long** the position was advertised
- proof that the print media and websites used to advertise target an audience that has the appropriate education, professional experience or skill level required for the occupation
- proof of other recruitment activities (for example, invoice from Job Fair)
- une copie de l'annonce du poste et les renseignements précisant **où, quand** et pendant **combien de temps** le poste a été affiché
- une preuve que les médias imprimés et les sites Web sélectionnés pour l'affichage du poste permettent de cibler un public ayant reçu la formation pertinente et ayant l'expérience professionnelle ou le niveau de compétence requis pour le poste
- une preuve d'autres activités de recrutement (par exemple, facture d'un salon de l'emploi)

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3771-20

STYLE OF CAUSE: TUFOR HOLDINGS LTD v THE MINISTER OF
EMPLOYMENT AND SOCIAL DEVELOPMENT
CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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