



Submission to: Joint Committee on Jobs, Enterprise and Innovation
From: Migrant Rights Centre Ireland
Re: Employment Permits (Amendment) Bill 2014
Date: June 2014

1. Who we are

Migrant Rights Centre Ireland (MRCI) is a national organisation working to promote justice, empowerment and equality for migrant workers and their families for over twelve years. MRCI runs a drop-in centre which provides information, advice and referral services to migrants on employment and immigration issues. The main focus is working with migrants who are at risk of exploitation, discrimination, poverty and social exclusion. Current priorities include rights for undocumented migrants; responding to forced labour; protections for migrants in diplomatic households; au pairs, carers, domestic workers, and restaurant workers; ethnic profiling; and access to education.

2. Context

The submission sets its views in the context that migration plays a positive and vital contribution in maintaining the size and dynamism of the labour force. This is important ‘as by 2015, immigration - at the current level - will not be sufficient to maintain the working age population in many OECD countries, especially in the EU.’¹ MRCI is concerned both with the situation of migrants who have made Ireland their home and remain in the work permit system, and with future labour market trends and skill need.

While demand for a broad range of skills continue to exist within the economy, without the corresponding regular channels of migration, some unscrupulous employers will inevitably exploit workers to meet their ongoing needs. A current example of this is ‘au pair workers’ being recruited to Ireland and forced to work long hours for less than minimum wage.²

3. Overall comments on the Employment Permit (Amendment) Bill, 2014

MRCI welcomes a number of the provisions set out in the Bill. In section 6 of the Bill, the placing of the undocumented workers scheme (Reactivation Scheme) on a statutory footing is a progressive step and will assist migrant workers to re-enter the labour market in certain circumstances. The provision (Section 2B) to enable undocumented workers to seek compensation orders in the civil courts, which seeks to address the loophole uncovered in the law in the case of Amjad Hussein v’s the Labour Court (Mohammed Younis case), is an important development.³

¹ Economy: Migration Starting to Rebound, 2012 , International Migration Outlook, OECD, July, 2012.

² Source: MRCI Research Part of the Family? The experiences of Au Pairs in Irel;and <http://www.mrci.ie/wp-content/uploads/2012/12/Part-of-The-Family.pdf>

³ The High Court case concerned Amjad Hussein, trading as Poppadom Restaurant, challenging a decision of the Labour Court with respect to Muhammad Younis, who was awarded €92,000 for breaches of employment law.

Currently, 58,985 people are registered and eligible to apply for a work permit in the state.⁴ Eligibility has been extended to incorporate all people on all immigration stamps in Ireland. In line with this we require a system that is fit for purpose and does not create the conditions for exploitation to occur which we believe this Bill is seeking to achieve. Risks for such workers remain prevalent as the Bill still ties a worker to their employer; therefore, their immigration status is dependent on that employment. This is a critical issue that we have consistently raised with the Department of Jobs, Enterprise and Innovation (DJEI) and which needs to be addressed in the current Bill.

While government policy is to provide a work permit system that enables migration of highly skilled workers, it is also necessary to provide migration channels to respond to demands in essential skill areas. Diversification of skills need must be factored into this process to ensure the development of the economy and the protection of labour rights and standards.

4. Proposed Amendments

4.1 Application for employment permits

Section 4(1) b of the 2006 Act provides for an employee to make an application for a work permit. As set out in section 9 (2) b of the Act, if the application is successful a permit will be issued to the employee with a description of the economic sector in which the employee is permitted. This permit is valid for a 2-year period. Under current practice this section of the Act has not been given full effect. The Act enables an employee to change employer within the economic sector they are working in. However, the current administrative system only allows an employee to change employer once the employee has worked for at least one year with the same employer and secured a new work permit. If an employee secures new employment within the economic sector they are working in, they should not be required to apply for a new permit until their existing permit has expired.

Recommendations:

- Remove all administrative impediments to the issuing of sector-based work permits.
- Reword section 8(2) (a) of the Bill to read *in the employment sector specified in the application*
- Replace at section 8(2) (b) (i) of the Bill *with the sector, specified in the application*.

4.2 Access to legal redress

In order to ensure that the lacuna in the law identified by Justice Hogan in *Amjad Hussien vs the Labour Court* is addressed, the proposal contained within the Bill needs to be strengthened to ensure that issue of exploitation is fully addressed.

Recommendation:

- Insert the following provision at section 2 (3) - *or; (b) that his/her contravention was as a result of and/or a feature of exploitative work practices by the employer against him/her.*

⁴ Source: Garda National Immigration Bureau

4.3 Work Permit fees

In line with the finding of the European Committee of Social Rights we believe that the fees for work permits are excessive. The current fees levels for work permits are in breach of Article 18 of the Council of Europe European Social Charter.⁵

Recommendation

- The fees for work permits should be reviewed and amended to bring Ireland back into compliance with Article 18.
- A provision to waive fees in exceptional circumstances at the Minister's discretion should be inserted into the Bill.

5. Comments and recommendations regarding Schemes

5.1 Spousal scheme

Nadia, a spouse who never held a work permit

Nadia was married for 16 years and came to Ireland with her husband and lived here as a spouse dependent for 9 years. She applied for long term residency (LTR) and was granted a stamp 3. When she told immigration she was separated they cancelled her LTR. Eventually she was granted her independent status: a stamp 1. She now seeks to apply for a work permit as a carer but ineligible job categories, salary level and labour market test apply. She is supporting two children under 18 years of age.

We welcome the fact that stamp 3 holders, such as spouses, can now apply for employment permits in their own right. Nonetheless, a spouse, following a marriage breakdown, who has been residing in Ireland for a significant period of time will still need to meet restrictive criteria when applying for an employment permit.

Recommendation

- Restrictive criteria in applications for employment permits should be waived following a marriage breakdown.

Example of New Services Need

- Migrant workers make up 27 per cent of care workers caring for older people. The OECD indicate that the ageing population will increase significantly, and there will be shortages in the eldercare workforce, therefore the role of migrant workers in elderly care will increase in the future. Population projections indicate that the over-65 age group will double over the coming decades. Care and personal household services is named as a growth sector in the EU Commission Employment Package and Social Investment Package.
- Research conducted by MRCI regarding the au pair industry shows that there is a demand for childcare services. There is systemic abuse of the concept of au pairing. It is evident that au pairs are being used as a cheap form of childcare, which also highlights the lack of regulation of the industry.

⁵ The Committee concluded that the situation in Ireland is not in conformity with Article 18§2 of Charter on the grounds that the fees for work permits are excessive.

5.2 Ineligible Job Categories

In the current economic climate there is a pressing need to review and re-formulate the ineligible categories. Emerging trends and demands for essential skills in the care industry need to be given priority. This is an important mechanism to ensure Ireland has inclusive, responsive and responsible legal channels of migration into the future.

Recommendation

- Undergo a process with a range of stakeholders to review the ineligible job categories, inclusive of essential skills and new services skill needs.

5.3 Documentary requirements

MRCI have identified an increasing trend whereby employees who are made redundant are not issued with proper documentation by their employers, such as a letter of redundancy and a P45. Employees should not be penalised by the unprofessional behaviour of their former employers. Likewise, if an employee makes the application for a work permit there are a number of documents relating to the company/employers such as tax information etc. they must provide to enable their application to be processed.

Recommendations

- In certain circumstances, where the worker cannot obtain documents due to the unprofessionalism of their employer, documentation requirements should be waived.
- DJEI should seek information from the employer directly rather than requiring employees to approach their employers to ask for documentation relating to the affairs of the company.