Uniting Church in Australia
SYNOD OF VICTORIA AND TASMANIA

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JUSTICE AND INTERNATIONAL MISSION UNIT
SYNOD OF VICTORIA AND TASMANIA
SUBMISSION TO THE
JOINT STANDING COMMITTEE ON MIGRATION
INQUIRY INTO TEMPORARY BUSINESS VISAS

The Justice and International Mission Unit welcomes this opportunity to make a submission to the Joint Standing Committee on Migration regarding temporary business visas.

Our concerns with regard to temporary business visas stem from the commitments that the inaugural Assembly of the Uniting Church in Australia made in June 1977, stating that:

> *We pledge ourselves to seek the correction of injustices wherever they occur. We will work for the eradication of poverty and racism within our society and beyond. We affirm the rights of all people to equal educational opportunities, adequate health care, freedom of speech, employment or dignity in unemployment if work is not available. We will oppose all forms of discrimination which infringe basic rights and freedoms.*

The Justice and International Mission Unit has grave concerns in relation to the administration of the Subclass 457 visa in terms of the current arrangements opening migrant workers to gross abuse. One of our congregations has provided to us clear evidence of abuse by a sponsoring employer, and the Unit is aware of other anecdotal reports of employers exploiting migrants workers on this particular visa.

Evidence of Employer Abuse of the Subclass 457 visa

A Uniting Church minister has provided testimony of one of her congregation members suffering gross exploitation by his employer, in relation to himself and others sponsored by the same employer. The minister has reported that the testimony of her congregational member was verified by a concerned co-worker. Because of the confidential nature of the relationship between minister and parishioner, and because of the high level of fear and anxiety of reprisal that this particular migrant is experiencing,

it is not possible to share the precise detail of this particular case. The fear and anxiety of the migrant worker is in itself a notable cause for concern. The case highlights the systematic way in which employers are able abuse the current system of implementing and monitoring this particular visa.

In the particular case, the employer has failed to fulfill minimum legal conditions. Up until Christmas day, 2006 the employee had not had single day off since arriving in Australia in the middle of 2006. In addition, the employee has and still is required to work well in excess of what is set out as reasonable in the Australian Fair Pay and Conditions Standard (AFPC) i.e. that the maximum ordinary hours of work be limited to 38 hours per week (which can be averaged over up to twelve months). The employee works more than double those hours which would no doubt be regarded as unreasonable under the AFPC. The actual amount paid to the employee was and is ridiculously below the minimum set out in the AFPC, at only $1000.00 per month (net), with no compensation for hours worked outside of the recommended 38-hours. The employer also appears to be overly controlling and threatening: he has provided very inadequate one-room accommodation and has refused to allow the employee to move to more comfortable lodgings (which members of the local church community would certainly be able to provide); in addition the employee has been actively discouraged from meeting and establishing relationships beyond the work place.

Department of Immigration and Citizenship (DIAC) officials have conducted routine follow-up checks of this employer during which employees have been instructed by the employer to give false statements about their pay and working conditions. The local Uniting Church minister reports how it is disturbing to see how easily employers are able to manipulate workers who are obviously made to feel quite vulnerable in the absence of clear information about their rights, and clear assurances that their positions would be protected should they feel compelled to make a formal complaint. In response to this issue, the Committee should consider reviewing the powers of DIAC or other relevant Commonwealth officials (e.g. the Office of Workplace Services). There should be scope for DIAC to investigate these kinds of matters covertly and to protect migrant workers from the threat of dismissal and deportation as a result of reporting an employer who is breaking the law.

The Uniting Church minister has reported that in her attempts to seek advice, guidance and protection for the particular person she discovered that his case is certainly not an isolated case.

Lack of Protection against abusive Employers

There appears to be little or no protection offered to visiting migrants under the subclass 457 and related visas where there are instances where sponsoring employers breach the terms and conditions of the visa.

Should employers breach the terms of the visa by failing to fulfill the minimum wage and conditions as determined by the DIAC and by the relevant awards/Australian Fair Pay and Conditions Standard, there seems to be little if any protection offered to sponsored employees.

DIAC, when consulted, advised that if a complaint was made to them either by the employee or the local church leadership that should the employer retaliate by sacking the employee the Department could offer no protection or assistance other than to offer the sacked employee opportunity to apply for an alternate visa, on the condition that a substitute sponsor could be found. DIAC allows a period of 30 days for alternative arrangements to be made for the employee. The individual faces loss of invaluable income and inevitable deportation should they fail to find an alternative sponsor. The official the Uniting Church minister spoke to suggested that DIAC may be more "lenient" about the time frame in such cases, but certainly was not prepared to offer a guarantee nor specify exactly how much time might be offered to a sacked employee to find an alternate sponsor.

The fear of deportation and losing even very limited income has meant that the employee will not make a complaint. Family members of the employee in the home country depend on what is sent to them and in addition, there is also some fear about possible reprisals.

DIAC officials in this case suggested contacting the relevant unions which was done. Advice from the ACTU and other relevant unions regarding this particular employee's case was that the unions were not able to act unless the person is a member. The unions in turn have advised seeking assistance through relevant government workplace relations bodies, such as the Office of Workplace Services, which may enable the employee to legally pursue a breach of pay and conditions, however, what was notably absent is any legal protection of the employee's position or assurance that the employee would be protected from the possibility of deportation should the employer retaliate by terminating the employment.

While there may be legal consequences for the employer for breaches of workplace relations regulations, the employee in making any challenge to the employer is left with the very real possibility of deportation well before any investigation and decision could be made through the relevant work place relations bodies.

So, again the employee is understandably fearful of taking or allowing others to take any action on their behalf.

The result of all this is that the particular situation of the migrant employee of which we are aware, as is no doubt the case for many other vulnerable visa holders, remains unchallenged and the exploitation and unlawful abuse in employment continues.

It is not sufficient for DIAC to simply offer the abused migrant the opportunity to seek another visa. The 30 day period officially allowed to abused employees to find alternate arrangements, even with a verbal and notably informal 'assurance' that DIAC would be lenient about the time frame would almost certainly not be sufficient time to make alternate sponsorship arrangements. To make the situation even more difficult for abused employees there is no available financial or other assistance offered to migrants under this visa should they be unfairly or unlawfully dismissed or decide that they can no longer continue to work in situations where they are being unfairly treated.

The local Uniting Church minister stated that she was disturbed by the relatively little that DIAC was either able or prepared to do to enforce the terms and conditions of the visa should employers be found to breaching them. When asked what consequences there are for employers that fail to meet minimum terms of the visa, an official advised that at the current time the only negative impact facing abusing employers from DIAC itself, is that the employer will have the sponsorship arrangement revoked and may not be permitted to sponsor other workers in the future. It appears that DIAC has in place no system of fines or penalties for employers who breach the visa conditions. This means that unless an employee pursues a case against an abusing employer under more general workplace regulations (and that is not likely without adequate resources, knowledge and assurances of protection) then employers can continue in patterns of abuse without repercussion, just as the employer of the quoted case continues to do. It would seem that the introduction of more adequate measures or enforcement of visa conditions, including much stronger penalties for abusing the visa arrangements may be one way of ensuring employers are more motivated to uphold the terms and conditions of the visa.

While the unions and the various workplace relations authorities are able to assist workers pursue claims for lost income or better working arrangements, this is of no value to employees facing deportation well before their cases can be finalized.

Recommendations

The Justice and International Mission Unit recognizes that the Government needs to provide a balance in the protections it provides to those on temporary business visas. On the one hand, protection needs to be provided to employees against abuse and exploitation from their employer and to ensure that such employees are protected from deportation and financial loss as a result of challenging unlawful behaviour by their employer. At the same time, such protections need to minimize the risk that those on temporary business visas will be able to make vexatious or malicious claims against an employer as a way of preventing dismissal for unacceptable performance or for unacceptable behaviour in the workplace (such as sexual harassment).

The Unit is not in a position to make detailed and specific recommendations to achieve this balance. However, it notes that the situation at the moment is very much on the side of an exploitative and abusive employer.

The Unit therefore recommends that:

- Urgent steps be taken to ensure the basic employment rights of visiting migrants under the subclass 457 and related visas to enable the appropriate investigation and response to abuses of the visa by sponsoring employers.
- Protections for visiting migrants holding subclass 457 and related visas should be improved, to ensure that all such visa holders:
    - are aware of their legal entitlements pertaining to their working conditions and pay;
    - are able to freely make a complaint without fear of reprisal by their employer;
    - are able to have their case heard in a timely and procedurally fair manner, in accordance with natural justice principles;
    - can continue in employment, or failing that receive income support and not be deported before their case is heard; and,
    - be allowed up to six months to find alternative employment in Australia where their case against an employer is upheld and they are no longer able to work for that employer.

If sponsored employees are required to have cases of exploitation and abuse investigated and pursued under general workplace relations regulations then it is essential that they are provided with the means to adequately pursue their case: that means not only availability to legal representation, but laws that protect their employment situation, or alternate means of support should that no longer be tenable. Most importantly it is essential that employees are given adequate time to pursue their case, without the pressure of threatened deportation.

DIAC needs to take greater responsibility for ensuring there is adequate enforcement of terms and conditions of the visa/s including and especially minimum wage and working conditions.

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