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April 29, 2015

Via email: robert.judge@cic.gc.ca

Mr. Robert Judge
Director, Temporary Resident Policy and Program
Citizenship and Immigration Canada
Immigration Branch
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Mr. Judge:

Re: New International Mobility Program Compliance Monitoring Measures

I write on behalf of the National Immigration Law Section of the Canadian Bar Association (the CBA Section). We are requesting clarification and would like to express concerns about aspects of the new International Mobility Program compliance monitoring measures, including the IMM5802 form (Offer of Employment to a Foreign National Exempt from a Labour Market Impact Assessment (LMIA)) and its associated fee and procedures.

The CBA is a national association of over 36,000 lawyers, notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. The CBA Section comprises lawyers whose practices embrace all aspects of immigration and refugee law.

The CBA Section supports efforts to monitor employer compliance with the *Immigration and Refugee Protection Act* and *Regulations*. It does not take issue with charging a cost recovery fee to fund these new measures. We have some questions and concerns about the new process, and we appreciate the Department's openness in addressing these questions and concerns.

1. Who is the employer? Who should pay the fee and complete the form?

Examples of ambiguous situations:

- foreign employees of a foreign company entering Canada to provide services to a Canadian client on behalf of the foreign employer – for example, as a management consultant
- foreign self-employed independent contractors entering Canada to provide services to a Canadian client on a short-term basis
- NAFTA investors or traders entering Canada to establish their own business

- self-employed entrepreneurs entering Canada to establish a business pursuant to r.205(a)
 - intra-company transferees entering Canada to establish a subsidiary of a foreign company.
2. Further to question 1, can a foreign employer file this form? If so, should inapplicable questions be left blank?
 3. The online payment system requires that employers select “inside Canada” even when the employer is outside Canada. Will this be corrected to accommodate employers located outside Canada?
 4. How will the submitted information be used in the long run? How will information be entered, where will it be stored, and under what circumstances and by whom will it be accessed?
 5. Will Citizenship and Immigration Canada (CIC) add a function to confirm receipt of the email or online submission? At present, there is no formal way to confirm that the form has been submitted and received. There is only the appearance of an outgoing message in the sender’s outbox, and no simple evidence is generated that can be shown to an officer.
 6. What must the foreign worker provide to an officer at the port of entry to demonstrate that the fee has been paid and the form has been filed?
 7. If the form must be provided to an officer at the port of entry, there may be confidentiality issues. The form requests sensitive corporate information, including revenues, that a privately-held company may refuse to disclose to an employee or prospective employee. What measures are in place to prevent inappropriate disclosure of such information to employees or to others?
 8. Do Canada Border Services Agency (CBSA) officers at ports of entry have access to the information in the relevant forms, or simply confirmation that the forms have been filed and the fee paid (given that the forms could have been submitted only moments before the foreign national appears at the port)?
 9. Lawyers have been advised to include an IMM5476 form when submitting the IMM5802 form on behalf of an employer. There are several problems with this:
 - The IMM5476 form is intended for individuals and requests information irrelevant to companies (first and last name, date of birth). It also requires the person signing to personally confirm information, rather than to confirm on behalf of their employer.
 - The IMM5802 form is not an application under the *Immigration and Refugee Protection Act* (IRPA). It is not an application at all, simply an information form, and there is no provision for an employer to make an application under the Act. For this reason, there is no legislative authority for requiring an authorized representative in this situation.
 - Individual employees applying for work permits at ports of entry still need to provide the IMM5476 form.

10. Will a representative portal be rolled out at the same time as the new online submission system, planned for summer 2015, which will allow counsel to submit the forms on behalf of their corporate clients?
11. The form requires that the person signing make certain attestations. Confusing wording on the form leaves it unclear whether the individual or their employer is making these attestations. Please clarify that the employer (the business) is making these representations and not the individual representative of the business in their personal capacity.
12. The process appears to violate some provisions of NAFTA and other international agreements. It requires that there be an employer (NAFTA provides for certain professionals to be self-employed) and requires certain attestations that are not applicable in treaty situations. Please clarify the steps taken to ensure that the new measures are consistent with NAFTA and other international treaties. Please also confirm that appropriate consultations have been undertaken with US, Mexican and other authorities to ensure reciprocity.
13. Are employers required to report changes in employment (from the terms set out in the form) to CIC or CBSA? If so, what mechanism is in place for them to do so?
14. What constitutes a completed form? If some fields are left blank because they are not applicable, is the form incomplete?
15. If an application was approved by a visa office before 21 February 2015, but the foreign national has not yet travelled, does the employer still need to pay the fee and file the form?
16. In the future, when information is collected through an online portal as proposed, will the information still be submitted without a signature from the employer?
17. To avoid duplication and redundancy, can the IMM5802 form be used when requesting a Labour Market Impact Assessment (LMIA) exemption opinion from the International Mobility Worker Units (IMWU)?
18. Is the IMM5658 form still to be used for requesting an LMIA exemption opinion from the IMWU?
19. Please clarify what information is required by s. 209.11(1)(c) of the *Immigration and Refugee Protection Regulations*, other than the information provided in the IMM5802 form pursuant to s. 209.11(1)(d).

Given these issues with the form and process in their current state, we ask what degree of flexibility will exist in the process until these issues are addressed. We also ask that you share any instructions that have been given to CIC and CBSA officers on how to implement the new requirements. We will share this information with our Section membership.

Yours truly,

(original signed by Eugene Oscapella for Deanna L. Okun-Nachoff)

Deanna L. Okun-Nachoff
Chair, CBA Immigration Law Section