



WORK PERMIT RESTRICTION ON “EMPLOYMENT IN BUSINESSES RELATED TO THE SEX-TRADE”

Submitted by Butterfly (Asian and Migrant Sex Workers Support Network)
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1. Introduction

Butterfly: Asian and Migrant Sex Workers Network (“Butterfly”) is a group of current and former sex workers, social workers, legal and health professionals who support and advocate for the rights of Asian and migrant sex workers. We believe that all sex workers are entitled to respect and human rights, and that Asian and migrant sex workers should not face discrimination and other human rights abuses due to their immigration status. Asian and migrant sex workers must be recognized as workers and afforded employment rights and protections like workers in other sectors. Butterfly works with a number of allies and coalitions to support and advocate for migrant sex workers, including as a member of the Canadian Alliance for Sex Work Law Reform (CASWLR) and the Migrant Workers Alliance for Change (MWAC). At present, the human rights of Asian and migrant sex workers are routinely denied because of their race, language barriers, and social, immigration and legal status. Stigma and marginalization increase their risk of exposure to violence and exploitation and hinder their access to basic health, social services, legal supports and other forms of protection and justice.

2. General background on work permits and migrant sex work

Temporary residents generally require a permit to work in Canada, although some may work without a permit (such as full-time students with a valid study permit working on campus). Usually, work permits must be obtained prior to entering Canada; however some migrants can apply for work permits in Canada, including: refugee claimants, persons being sponsored by a spouse, caregivers, temporary resident permit holders, international students, people who came to work in other industries in Canada, people who have had a Humanitarian & Compassionate (“H&C”) application approved, and those who have submitted a Pre-Removal Risk Assessment Application (PRRA). Work permits can be “closed” (i.e., tied to a specific employer, type of employment or region) or “open,” meaning the person is authorized to work for any employer or be self-employed. Section 185 of the *Immigration and Refugee Protection Regulations* (IRPR) also authorizes an immigration officer to impose, vary or cancel conditions on work permits.

Migrant workers in the Temporary Foreign Worker Program (TFWP), Seasonal Agricultural Workers Program (SAWP) and the Caregiver streams are issued closed work permits tied to specific employers, which increases worker insecurity, immobility and vulnerability to labour exploitation. Temporary residents who are visitors, those under an enforceable removal order, undocumented and out-of-status migrants, and those awaiting determination of an H&C application are not eligible to apply for a work permit. There are thousands of people in Canada without valid immigration status who are part of the Canadian labour force. However, being found working without a permit or in violation of one of the conditions on a permit could lead immigration enforcement to cancel a person's temporary resident status and remove the person from Canada.

Butterfly has worked with migrant sex workers who hold various types of temporary resident status, as well as those who are undocumented, out-of-status or are permanent residents of Canada. While some migrants choose sex work as their preferred work for many reasons, not everyone migrates seeking sex work-related employment. Some migrants choose sex work-related employment because they have limited economic options in Canada. Often, migrants who are racialized, poor, working-class women and trans people do not have access to regular channels of labour migration. Free trade agreements and other economic policies mean that the local labour markets in many regions, particularly those in the global south, are severely impoverished. As a result, traveling abroad to work can be a way of earning a better income than one would make in one's home country, even for people with professional credentials. However Canada and many other wealthier countries severely restrict migrant people's work options, limiting them to exploitative, unsafe, low waged, and temporary jobs, often in the agricultural or domestic sectors, on the basis of their citizenship status. These jobs are often only temporary in theory, because workers return year after year or remain in Canada in these positions for several years without the rights of permanent residents. Migrants with professional qualifications and post-secondary education also face considerable challenges in having their foreign credentials recognized. For many, sex work-related employment can be a way of navigating these unequal and discriminatory job markets. Dominant ideas about sex workers as immoral or victimized erase the complexity of people's lives and the choices that they make given their available options. For those who are restricted in their opportunities to work and live in Canada, and who may not be able to access regular channels of work, sex work can be a way to resist other kinds of oppression, gain more freedom and independence, and maintain or increase quality of life (e.g. ability to buy food, clothes, support children, pay rent, etc.).

3. Restriction on employment in “businesses related to the sex-trade”

On December 31, 2013 amendments to the *Immigration and Refugee Protection Regulations* (IPRR) under the title “Protecting Foreign Nationals from Risk of Abuse and Exploitation”¹ introduced section 183(1)(b.1):

¹ *Regulations amending the Immigration and Refugee Protection Regulations*, SOR/2013-245 C. Gaz. 2014. II. 148.

183(1) Subject to section 185, the following conditions are imposed on all temporary residents:

b) to not work, unless authorized by this Part or Part 11;

b.1) if authorized to work by this Part or Part 11, to not enter into an employment agreement, or extend the term of an employment agreement, with an employer who,² on a regular basis, offers striptease, erotic dance, escort services or erotic massages.²

Since then, all work permits issued in Canada contain the following condition:

“[n]ot valid for employment in business related to the sex-trade such as strip clubs, massage parlours or escort services.”³

Currently, all temporary workers are prohibited from working in “businesses related to the sex-trade” regardless of how they are authorized to work (e.g., international students doing work off campus, those with otherwise open work permits, as well as people who are self-employed). While section 183(1)(b.1) applies to work permits issued to those already inside Canada, section 200(3)(g.1) imposes the same restriction on everyone seeking to enter Canada.⁴ The restriction is so broad that temporary residents may be prohibited from working in any capacity in sex work-related employment (e.g., even as cleaning staff at a strip club).⁵

Immigration, Refugees and Citizenship Canada’s (IRCC) Ministerial Instructions contain limited guidelines for officers processing in-Canada and overseas work permit applications about how to identify a business that provides sex-related services in the regular course of business (where permits must be refused) versus at special events (where permits may be issued). Although presented as a case-by-case assessment, the thrust of the instructions is for officers to refuse permits when they consider prospective work is employment related in any way to the sex trade.⁶ In addition to officers’ ability to refuse to issue a work permit in the first place, as a result of section 183(1)(b.1) of the IRPR, officers can commence an investigation where there are grounds to believe a person is working in businesses related to the sex trade in Canada, which could result in the cancellation of the permit and the loss of temporary resident status in Canada.

It is important to note that prior to 2013, the Canadian government facilitated some sex work-related employment by issuing temporary work visas, including positive labour

² *Immigration and Refugee Protection Regulations*, SOR/2002-227 s. 183(1)(b.1) [IRPR]

³ Citizenship and Immigration Canada, Ministerial Instructions, “Refusal to process work permits” (16 September 2014), online <<http://www.cic.gc.ca/english/resources/tools/temp/work/vulnerable.asp>>.

⁴ IRPR at s.200(3)(g.1).

⁵ Citizenship and Immigration Canada, Operational Bulletin 567, “Protecting foreign nationals from the risk of abuse and exploitation” (14 February 2014), archived online <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/bulletins-2014/567-february-14-2014.html>>.

⁶ Citizenship and Immigration Canada, “Steps to determine work and assessment of work permit applications” online <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/eligibility/steps-determine-work-assessment-work-permit-application.html>>.

market opinions through the temporary foreign worker program. These were referred to as “exotic dancer visas” as they were issued primarily to women seeking to work for a Canadian strip club employer. As sex work became increasingly conflated with sex trafficking and sexual exploitation, however, the permits continued to be available in law but less frequently issued in practice. In 2004, visas for sex work-related employment were in the news when Member of Parliament Judy Sgro was criticized for issuing a visa extension and temporary resident permit on humanitarian grounds to a Romanian woman who volunteered in her campaign office.⁷ At this point, the government of Canada made public statements about cancelling the program. Yet, visas continued to be issued (although less frequently)⁸ until Ministerial Instructions were issued on July 14, 2012 prohibiting all work in sex-related industries.⁹ Immigration officers were instructed to refuse work permit applications for anyone applying to work in an industry where there was a “reasonable belief” they may be exploited. In introducing the 2012 permit restrictions, Diane Finley, then Minister of Human Resources and Skills Development Canada (HRSDC) stated: “If there is a risk of exploitation, a risk of human trafficking for that individual, then we’re going to protect that individual and say no.”¹⁰ That same year, the Federal government also launched the *National Action Plan to Combat Human Trafficking*.¹¹

4. The restriction harms migrant sex workers

Between 2013-2016, several migrant sex workers were murdered. In November 2013, Jiali Zhang was found dead in an apartment in Stoney Creek, Ontario. She had come to Canada from Hong Kong in 2007 and was still awaiting determination of an immigration application.¹² About one year later, Evelyn Bumatay Castillo was murdered in a hotel room in Mississauga, Ontario. At the time of her death, Ms. Castillo had been working as a

⁷ Jeff Sallot and Colin Freeze, “Exotic-dancer program on Sgro hit-list”, *The Globe & Mail* (24 November 2004) online <<https://www.theglobeandmail.com/news/national/exotic-dancer-program-on-sgro-hit-list/article1007653/>>.

⁸ Laura Payton, “Exotic dancer no longer eligible job for foreign workers”, *CBC News* (4 July 2012) online <<http://www.cbc.ca/news/politics/exotic-dancer-no-longer-eligible-job-for-foreign-workers-1.1151414>>. According to the article: “[t]he exotic dancer option has been less and less available over the years, with only 496 visas issued between 2006 and 2011 — much less than the 1,713 visas issued to exotic dancers between 2001 and 2005. The majority of permits issued recently have been for people who are already in Canada, as opposed to those who applied for the permits from outside the country.”

⁹ *Citizenship and Immigration Canada*, “Operation Bulletin 449: Work permit applications for Temporary Foreign Workers for businesses in sectors where there are reasonable grounds to suspect a risk of sexual exploitation of some workers”, (12 July 2012), online: CIC <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/bulletins-2012/449-july-13-2012.html>>. [OB 449]

¹⁰ Laura Payton, “Temporary foreign workers no longer eligible to become exotic dancers in Canada” (4 July 2012), online: CBC News <<http://www.cbc.ca/news/politics/exotic-dancer-no-longer-eligible-job-for-foreign-workers-1.1151414>>.

¹¹ Government of Canada, *National Action Plan to Combat Human Trafficking* (Her Majesty the Queen in Right of Canada, 2012). [*National Plan*].

¹² John Rieti, “Police searching for people who knew slain sex worker” (21 November 2013), online: CBC Hamilton <<http://www.cbc.ca/news/canada/hamilton/news/police-searching-for-people-who-knew-slain-sex-worker-1.2435718>>

caregiver in Canada for over two years and she was also working in sex industry.¹³ Then, in January 2015, another sex worker, Tammy Le was found strangled to death in a hotel room in Hamilton, Ontario.¹⁴ In August 2016, an arrest warrant was issued in relation to the disappearance of Annie Li, who also migrated to Canada and was doing sex work related employment. She was last seen in Markham, Ontario in June 2016.¹⁵ Rather than being isolated tragic incidents, these deaths must be understood within the context of laws and policies that construct vulnerability of sex workers, especially migrant sex workers.

In particular, in Butterfly's experience, the restrictive work permit regime has increased immigration enforcement at federal, provincial and municipal levels, thereby increasing the rates of arrest, deportation and detention faced by migrant sex workers.¹⁶ Even if not arrested and deported, the collaboration between local, regional and federal police, Canada Border Services Agency (CBSA) and municipal by-law enforcement can have a profound impact on migrant sex workers. In Butterfly's experience, this includes racial profiling by law enforcement, abusive investigative practices, warrantless searches and detention, and interrogation by police and CBSA on suspicion of trafficking. For example, in 2015 "Blue", a migrant worker, was cleaning the service room in a massage parlour where she worked when police raided her workplace. Not all massage parlours in Canada offer sexual services, and Blue chose to work at this location in order to have a flexible schedule that would allow her to meet her financial and study obligations. The police conducted a search and found no illegal activity and did not charge or arrest anyone. However, they asked Blue for her immigration documents. She provided them her valid work permit. The permit did not contain a restriction on work in sex work related employment because she obtained her permit before the restrictions took effect. Despite having a valid permit and not criminally charging Blue with any offence, the police called CBSA and proceeded to detain and interrogate her for two hours about why she was working in massage parlours and why she came to Canada. As a result of this experience, Blue was too afraid to return to her job and started working in another location where full sexual services were expected, although she preferred the control and ability to negotiate services at the massage parlour. When she renewed her work permit, she learned of the new prohibition on work in businesses related to the sex trade. Subsequently, when Blue was robbed while at work she was too afraid to turn to law enforcement for help, fearing deportation for breaching the conditions on her new work permit.¹⁷

Those who employ migrant sex workers are also subject to increased surveillance, which has a negative impact on working conditions. For example, some workers have reported

¹³ "Family distraught over murder of Evelyn Castillo, deny she worked in sex trade" (15 December 2014), online: CBC News <<http://www.cbc.ca/news/canada/toronto/family-distraught-over-murder-of-evelyn-castillo-denies-she-worked-in-sex-trade-1.2873625>>.

¹⁴ "Remembering and Honouring Tammy Le" (29 January 2016), online: Butterfly <<http://www.butterflysw.org/statement>> [Tammy Le Statement].

¹⁵ Will Campbell, "Manslaughter warrant issued for Toronto man after missing Markham woman presumed dead" (3 August 2016), online: Global News <<https://globalnews.ca/news/2863130/manslaughter-warrant-issued-for-toronto-man-after-missing-markham-woman-presumed-dead/>>.

¹⁶ Butterfly, *Journey of the Butterflies* (2016), online: <http://media.wix.com/ugd/5bd754_b53167612529491a8b30dae89f71bf55.pdf> [Butterfly Journey]

¹⁷ *Butterfly Journey* Supra note 16 at p. 9.

being encouraged to “keep safer sex materials like condoms offsite to prevent their seizure as evidence” in the event of workplace raids by police or immigration enforcement.¹⁸ Workers are also prevented from communicating clearly with clients because they fear undercover police, and with colleagues because they fear establishing evidence that could be used in criminal or immigration investigations. These barriers to effective communication in the workplace negatively impacts working conditions by creating isolation and risk of exposure to abuse. Workplace raids also increase the sense of insecurity migrant sex workers face generally in Canada. For example, in May 2015, following raids across Canada as part of an anti-trafficking investigation, 11 workers in Ottawa were detained and deported.¹⁹ In September 2016, Butterfly connected with 18 women who were arrested and detained after a Toronto-area raid.²⁰ Through outreach and organizing activities, Butterfly and allied sex worker groups have reported that Asian migrant sex workers have faced a number of robberies and assaults and felt they could not report these crimes to the police because of their precarious status.

In addition, Butterfly has been contacted by workers who have reported experiencing racial profiling by police and by-law enforcement, with Asian workers being specifically targeted during inspections. For example, Butterfly was contacted by an Asian worker named Fanny who was handcuffed during an inspection because she could not show identification. While Fanny initially thought that she was in trouble for engaging in sex work, she noticed that only Asian workers were being taken away, while white sex workers stood by and watched.²¹ Workers have also reported to Butterfly that even when they tell police that they choose to work in the sex industry, they are assumed to be exploited and police have threatened to arrest them if they return to work. This has created a surveillance matrix with police communicating and collaborating with municipal enforcement, CBSA and other police forces (including the RCMP) despite the existence of “Access Without Fear” policies in some cities that are intended to enable non-status people to access police and city services without fear that they will be turned over to immigration authorities.²² In addition, due to these fears, migrant sex workers are often reluctant to access health, social and other services when they are needed.

¹⁸ Canadian Alliance for Sex Work Law Reform, Joint Submission for Canada’s Review before the UN Committee on the Elimination of All Forms of Discrimination Against Women, 65th Session (October 2016) at p. 12. [*CASWLR Submission*]

¹⁹ Catherine McIntyre, “Migrant sex workers caught up in Ottawa sting facing deportation, further exploitation: activists”, (13 May 2015), online: National Post <<http://nationalpost.com/news/canada/migrant-sex-workers-caught-up-in-ottawa-sting-facing-deportation-further-exploitation-activists>>.

²⁰ Canadian Alliance for Sex Work Law Reform, “Sex Workers Speak Out: Migrant sex workers live under constant police threat”, (23 September 2016), online Ricochet Media <<https://ricochet.media/en/1421/migrant-sex-workers-live-under-constant-police-threat>>.

²¹ Butterfly, “Behind the Rescue: How Anti-Trafficking Investigations and Polices Harm Migrant Sex Workers”, online: <https://docs.wixstatic.com/ugd/5bd754_f1fe5b57f4004ed39ea9550e1777ef34.pdf>, p.18.

²² For example, the City of Toronto Council passed the Sanctuary City Motion on February 21, 2013. See: City of Toronto, CD18.5, “Undocumented Workers in Toronto” (20 February 2013), online: <<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CD18.5>>.

5. Temporary Resident Permits do not remedy these concerns

Since 2006, Temporary Resident Permits (TRPs) have been available for “potential victims of human trafficking.”²³ They are usually issued for a period of 6 months (although this can be extended or shortened), and do not by themselves lead to permanent resident status in Canada. To obtain a TRP a person is required to report the circumstances of employment to IRCC, undergo an interview and provide requested documents. They may also be required to cooperate with a criminal or immigration investigation into allegations of trafficking. Oftentimes, this involves collaboration between IRCC, CBSA, RCMP, local police services and non-governmental organizations. Since issuing TRPs is discretionary, people without status or who are working in violation of their employment conditions risk deportation when they come forward. Migrant sex workers may also not identify as victims of trafficking, and tying legal immigration status to participation in such a framework is not a viable option for many. While a person who holds a TRP of over 180 days is eligible to apply for a work permit, this permit will include the prohibition against employment in “businesses related to the sex-trade.” Because of this, the availability of the TRP does not address the underlying negative consequences of the work permit restrictions discussed above.

6. Conclusion

While the government of Canada may regulate temporary residents’ ability to enter and work in Canada, the restrictions contained in sections 183(1)(b.1) and 200(3)(g.1) of the IRPR foster unsafe and exploitative working conditions, including where migrant people are working in isolation and face threats to their personal safety, security, autonomy and integrity. Migrants engaged in sex work-related employment are also prevented from accessing social, health and legal services when required due to fear of detention and deportation. These provisions, rooted in the belief that exploitation can be addressed through an anti-trafficking framework, also have the effect of enhancing stigma and discrimination by erroneously positioning sex work-related employment as inherently dangerous or immoral, and migrant sex workers as not deserving of the rights and freedoms extended to permanent residents. This framing obscures the fact that Canadian laws and polices actually work to create precarious living and working conditions by impairing the economic, employment and social rights of migrant sex workers.

In light of the above, **we call on the federal government to repeal sections 185(1)(1.b) and 200(3)(g.1) of the IRPR and related laws and polices that prohibit migrant people from doing sex work-related employment.** Instead of engaging an anti-human trafficking framework, we urge the government of Canada to work with migrant sex worker groups to address migrant sex workers’ concerns about abusive and exploitative employment and

²³ CIC guidance note <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/permits/considerations-specific-victims-human-trafficking.html>>. In 2016, IRCC issued 59 TRPs to victims of human trafficking (39% to females and 61% to males), and 8 TRPs to their dependants (25% to females and 75% to males). See 2017 Report to Parliament on Immigration online <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/annual-report-parliament-immigration-2017.html#section2>>.

enforcement practices through human rights, occupational health and safety and employment laws.

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