

12 June 2014

Submission to the Joint Oireachtas Committee on Jobs, Enterprise and Innovation: Employment Permits (Amendment) Bill 2014

Introduction

Nasc, the Irish Immigrant Support Centre, is a non-governmental organisation working for an integrated society based on the principles of human rights, social justice and equality. Nasc (which is the Irish word for link) works to link migrants to their rights through protecting human rights, promoting integration and campaigning for change. Nasc was founded in 2000 in response to the rapid rise in the number of asylum seekers and migrant workers moving to the city of Cork. It is the only NGO offering legal information and advocacy services to immigrants in Ireland's second city.

The Nasc legal service has considerable experience responding to enquiries from employment permit holders. The content of this submission is drawn from the case work that Nasc has carried out through its legal service. Nasc directly assists an average of 1,000 migrants on an annual basis. Our service responds to the needs of employment permit holders by way of acting on behalf of this migrant group in individual cases to both to the Department of Jobs, Enterprise and Innovation (DJEI) and the Irish Naturalisation and Immigration Service (INIS), and campaigning for reform of the current regime.

Nasc welcomes the publication of the Employment Permits (Amendment) Bill 2014 (http://www.djei.ie/publications/labour/2014/Employment_Permits_Bill_2014.pdf) by the Minister for Jobs, Enterprise and Innovation. In particular, we welcome the intention to introduce legislative protection for migrant workers who do not hold an employment permit in cases of illegal employment contracts, in response to the high court decision in *Younis* (Amjad Hussein -v- The Labour Court and Mohammah Younis [2012] No. 194 J.R.). The Bill proposes to legislate for a number of current policies already in place concerning the current administration of employment permit schemes and we welcome the intention to provide legislative protection in these areas.

Nasc previously made submissions to the Department of Jobs, Enterprise and Innovation prior to the publication of this Bill, with a particular focus on the availability of a mechanism whereby undocumented

migrant workers could regularise their immigration permission. The Nasc legal service has assisted a number of undocumented migrant workers to regularise their immigration status and obtain new employment permits. In our experience, the current process for regularisation of undocumented migrant workers, in exceptional cases, is currently subject to discretionary and inconsistent decision making. We therefore particularly welcome the proposal to introduce legislation that will provide for a '*Reactivation Employment Permit*' for migrant workers who previously held an employment permit but fell out of employment through no fault of their own.

Information

The following submission focuses on particular aspects of the bill most relevant to the work of Nasc and our service users.

1. Undocumented migrant workers and Reactivation Employment Permits

The provisions contained in Section 6 propose to insert Section 3(A)(2)(f) into the Act of 2006 have the potential to ensure attainable pathways to regularisation for undocumented migrant workers in the State and we particularly welcome the co-operation of the Department of Justice in this regard. However, we believe that the requirements proposed by section 3(A)(2)(f) are overly restrictive and a number of undocumented migrant workers will be unable to regularise their status in the State as a result. We submit that this section should include a provision where the requirement to have 'previously held an employment permit that is no longer in force' could be waived in exceptional circumstances where the migrant worker has been exploited.

Section 3(A)(2)(f) also requires applicants to not be in employment when making an application under this section. It is submitted that this section should be removed as the majority of undocumented migrant workers have no option but to engage in black market employment while they seek to regularise their permission in the State. This provision will deter undocumented migrants from availing of the reactivation scheme. We submit that the requirement to have received an offer of employment 'in respect of an employment for which an employment permit is required' should also be deleted as undocumented migrants in our experience are often low skilled and unable to satisfy the eligible job categories for the grant of an employment permit.

It is our experience that delays in processing applications can have a serious impact on the outcome of an application. The immigration permission extended to undocumented migrants by the Department of Justice to apply for an employment permit can often expire before a decision has been made. However, then the lack of immigration permission may be stated as a reason for refusing the employment permit. The validity of immigration permission should not be used as a ground for refusal in cases where the applicant had a valid permission when the application was submitted. It is therefore submitted that section 3(A)(2)(f) should be amended to provide for permission from the Department of Justice to be valid at the time of submission of the application.

Section 14 (1)(c) provides that an employment permit can be refused if the foreign national landed in the State without immigration permission and has not been given permission by the Minister for Justice pursuant to section 2(10)(d) 2003 Act and was employed when the application for an employment permit was made. Section 14(1)(c) also provides that refusal may be issued where the foreign national was previously employed in the State without a permit or immigration permission. It is submitted that section 14(1)(c) is overly restrictive and the requirement to not be in employment at the time of making an employment permit application should be removed.

Section 14(2) amends section 12 of the Act of 2006 by inserting numerous provisions after subsection (1) that allow the Minister to refuse an application. Section 14(2)(1i) refers to applications made under section 3A(2)(f), i.e. reactivation employment permits. It allows the Minister to refuse these applications if an employment permit application was previously made for that purpose and no renewal application was submitted, and it is in the 'public interest' to refuse the application. Employment permit holders are completely dependent upon their employer in relation to the submission of renewal applications and we have experience of cases where a failure to submit a renewal application results from no fault on the part of the employment permit holder. It is submitted that section 14(2)(1i) should be amended to include a provision that excludes a refusal on the basis that failure to submit a renewal application resulted from no fault on the part of the employment permit holder. It is submitted that the refusal of an employment permit on the basis of 'public interest' should be deleted as it has the potential to allow for arbitrary and inconsistent decision making. Section 14(2)(1i) also allows for a refusal in cases of foreign nationals who hold an immigration permission that prohibits them from entering into employment. It is submitted that this section should be deleted as it prohibits certain categories of legally resident migrants to obtain an employment permit, in particular, international students resident in the State.

2. Spousal / Dependent Employment Permits

Section 3(A)(2)(b) provides that spousal / dependent employment permits will only be available for spouses / dependents of highly skilled workers holding an employment permit as detailed in section 3(A)(2)(a) in order to encourage this category of foreign national to take up employment in the State. Spousal / dependent employment permits may also be granted to family members of a research project researcher resident in the State pursuant to Directive 2005/71/EC. We submit that spousal / dependent employment permits should be available to all categories of employment permit holders in order to ensure that family members of migrant workers have an opportunity to become economically viable in the State and contribute to the economy. In addition, the extension of spousal / dependent employment permits to all categories of employment permit holders would be a mechanism whereby family members can integrate into Irish society and would ensure respect of migrant workers private and family life pursuant to Article 8 European Convention on Human Rights

Section 3(A)(2)(b)(i) provides that spouses or dependents who wish to apply for an employment permit must have obtained permission to land and reside in the State as a dependent (emphasis added). This provision would appear to exclude relationships that have formed in the State due the requirement to have obtained 'permission to land'. The requirement to have obtained both permission to land and reside should be removed in order to allow for relationships to have formed in the State to avail of spousal / dependent employment permits. The availability of spousal / dependent employment permits are essential in order to attract and retain highly skilled employment permit holders.

3. Sectoral Work Permits

While the current bill does not make any provision in relation to sectoral employment permits we wish to highlight the fact that a sectoral approach to the issuance of employment permits is provided for under Section 4(1)(b) of the Employment Permits Act 2006. We submit that Section 4(1)(b) of the Employment Permits Act 2006 should be fully implemented to allow the permit holder to work in a particular economic sector as opposed to working for a specified employer as is the current practice. In Nasc experience this practice greatly increases the risks of workplace exploitation and limits labour market mobility.

Correct implementation of Section 4(1)(b) would allow all permit holders to change employer within the permitted economic sector and would remove the requirement to apply for a new work permit. The

provision of sectoral work permits should protect migrant workers from becoming undocumented as they would have greater mobility within the labour market.

4. Undocumented Workers Scheme for exploited migrant workers

We submit that provision for an open ended undocumented workers scheme should be introduced in the bill to cater for migrant workers who have been subjected to exploitation, fraud, deception and employer non-compliance and do not qualify for the reactivation employment permit provided for in section 3(A)(2)(f). Such a scheme should include concessions relating to salary thresholds and ineligible job categories to ensure that low skilled undocumented migrants are afforded an effective pathway to regularisation.

Further Information

A representative of Nasc is willing to appear before the Committee in a public session to discuss the recommendations made in this submission.

Claire Cumiskey
Senior Legal Officer
Nasc, the Irish Immigrant Support Centre
Ferry Lane,
Off Dominic Street
Cork
PH: (021) 450 3462
Email: claire@nascireland.org