

Case In Point

Requiring Proof of Eligibility to Work in Canada on a Permanent Basis Discriminatory

Date: August 1, 2018

In a recent decision released by the Human Rights Tribunal of Ontario (Tribunal), the Tribunal found that an employer discriminated against a potential employee on the basis of citizenship when it required proof of eligibility to work in Canada on a permanent basis (Canadian citizenship or permanent residency) as a condition of employment.

In [*Haseeb v. Imperial Oil Limited*](#), the Applicant, a student at McGill University completing his engineering degree, applied for an entry level engineering position at Imperial Oil during his final semester. At the time, he was an international student on a student visa. Upon graduation, he would become eligible for a “postgraduate work permit” (PGWP) for three years which would allow him to work full time, anywhere, and with any employer in Canada. He anticipated that he would attain permanent residency status within three years.

Imperial Oil required graduate engineers to have permanent residency or Canadian citizenship and asked a number of questions throughout the application process about whether the Applicant was eligible to work in Canada on a permanent basis, to which he repeatedly responded “Yes.” He was successful in Imperial Oil’s multi-step selection process and was offered a job, conditional upon providing documentary proof of citizenship or permanent residency. When he was unable to provide such proof, the offer was rescinded.

At the hearing, Imperial Oil argued that his dishonesty during the interview process (namely, lying about his eligibility to work in Canada) was the reason the offer was rescinded. However, the Tribunal Vice-Chair found that the offer had actually expired when he failed to provide the required documents, and in any event, the evidence did not prove that this was the *sole* reason he was not hired. Further, the Vice-Chair found that Imperial Oil’s hiring policy was directly discriminatory on its face, and as a result, it could not rely upon an argument that *permanent* eligibility to work in Canada was a *bona fide* occupational requirement. In any event, she further found that it was not, as it was a requirement that was occasionally waived (by providing offers conditional upon obtaining permanent residency within a few years) for candidates whose skills were in high demand.

The Tribunal is waiting to provide a decision on the appropriate remedy following submissions by the parties.

In light of this decision, employers should carefully review their hiring documentation and practices. While requiring proof of eligibility to work in Canada is permissible (and in fact required), employment decisions cannot be made on the basis of *permanent* eligibility to work in Canada.