

## ***Tribunal finds Discrimination Based on Immigration Status***

The Ontario Human Rights Tribunal has issued what is likely to be considered a precedent setting decision on the issue of discrimination on the basis of citizenship. The Tribunal in *Haseeb v. Imperial Oil Limited* has found that employers cannot discriminate against job candidates who do not have Canadian permanent residence status or citizenship, but are legally able to work in Canada.

Mr. Haseeb came to Canada from Pakistan in 2009 to complete his engineering degree at McGill University. During his final term, he applied for a permanent, full-time Project Engineer position at Imperial Oil. At various stages throughout the interview process, he was asked about his eligibility to “work in Canada on a permanent basis.” He answered “Yes” to this question through the process, even though upon graduation he would only be eligible to work in Canada for a three year term.

Mr. Haseeb was provided with a job offer which was conditional upon Mr. Haseeb providing proof of his eligibility to work in Canada on a permanent basis by way of (1) Canadian birth certificate, (2) Canadian citizenship certificate, or (3) Canadian certificate of permanent residence. When Mr. Haseeb was unable to provide proof, the company rescinded the offer.

The Company argued that its policy did not discriminate on the basis of citizenship given permanent residents can meet the requirements. The company argued in the alternative that the policy was justified as a *bona fide* occupational requirement because of the investment made by the Company in training new recruits and the Company’s expectation that the recruits spent their entire careers with the company in positions of progressive responsibility. Furthermore, the Company argued that their loss of investment in Mr. Haseeb in the event he did not obtain permanent residence status would amount to undue hardship.

Finally, the Company argued that it rescinded the offer not because of Mr. Haseeb’s residency status but in light of his dishonesty in the application process.

The Tribunal found that the requirement that Mr. Haseeb be eligible to work in Canada on a permanent basis was direct discrimination on the ground of citizenship. The Tribunal found that distinguishing amongst individuals on the basis of either “Canadian citizenship”, “permanent residence” status, or “domicile in Canada with the intention to obtain citizenship” is discrimination.

The Tribunal also found that given the policy amounted to direct discrimination under the *Ontario Human Rights Code*, the *bona fide* occupational requirement defence was not available to the Company. Even if the defence was available, the policy was not an occupational requirement because the requirement could be waived at the Company’s discretion. For example, the Company had waived the requirement for hard to fill positions or for people with a unique set of skills.

Finally, the Tribunal was not persuaded that Mr. Haseeb would have been hired if not for his dishonesty. Therefore, the decision not to hire Mr. Haseeb was tainted by the permanence requirement.

Employers across the country should take this decision to heart and review their hiring practices to ensure candidates are not being screened out based on their ability to permanently work in Canada. If you have any questions regarding your hiring practices or policies please contact e2r® to speak with an Advisor.