

Irish Congress of Trade Unions



Submission on Immigration Bill 2004

Congress Main Recommendations in Respect of the Immigration Bill 2004

The *Immigration Bill 2004* provides for the operation of controls on the entry into the State of non-nationals and for controls on non-nationals while within the State. The Bill was considered necessary following on from the High Court decision in *Leontjava and Chang* (22 January 2004) which found that provisions of the Aliens Orders allowing a condition on the duration of stay to be attached were *ultra vires*. As a consequence, the Minister for Justice Equality and Law Reform concluded that this *Immigration Bill 2004* was essential as there is now no reliable legislative basis for the operation of immigration controls on the entry to or presence in the State of non nationals.

Congress believes that the *Immigration Bill 2004* has a number of provisions that need to be amended. Congress believes that in its current form the Bill discriminates against people with disabilities, fails to establish systems that protect the rights of non-national workers and potentially makes some non-national workers more vulnerable to exploitation and abuse.

The Irish Congress of Trade Unions has a number of concerns about the proposals in this Bill as they affect:

- Rights of People with Disabilities
- Operation of Employment Permits Act 2003
- Restrictions on Employment
- Rights of Seafarers
- Right to Claim Asylum

People with Disabilities

The Irish Congress of Trade Unions opposes the provision in Section 4 (3) (c) of the *Immigration Bill 2004* that disability can be cause for refusal of permission to enter Ireland. The Irish Congress of Trade Unions also opposes the proposed amendment to change this to exclude those people who experience a mental illness or disability, this is discrimination based on prejudice.

Congress supports the inclusion of limited provisions to provide for the Minister for Health to make regulations to limit travel where this is necessary, on proven medical grounds, to ensure against outbreaks of diseases as for example the recent SARS illness. Congress is recommending that the definition of prescribed disease or disability be amended in this context and that responsibility for making regulations on Section 4(3)(c) be given to the Minister for Health.

Operation of Employment Permits Act 2003

Section 4 of the *Immigration Bill 2004* confirms the requirements for a work permit as set out in the *Employment Permits Act 2003*. Congress is recommending that this Bill be used to make provision to address the serious inadequacy in the 2003 Act of a lack of defense for employees who are misled into believing their employer has applied for and been granted a permit for their employment in the State.

Congress has previously raised our serious concerns about the absence of a defense for employees in this circumstance.

Unlike employers who are provided with a defence in the Act no defence is provided for employees. This is unfair, particularly as it is the employer who applies for and owns the work permit not the employee. Circumstances have already shown that employees can incorrectly believe that their employer had complied with the requirements for their work permit.

In addition to those non-national workers who have been misled into thinking that their employer has a permit for them, there are other categories of workers who may face problems. The 2003 Act leaves the situation of a number of employees unclear *for example*,

- in circumstances where employees go to work with another employer, there is as much as a ten week change over period of the permit between employers. Congress understands that this affects 3,000 workers each year, yet their position has been made less certain and more vulnerable by the introduction of the *Employment Permit Act 2003*.
- The transfer of a business means that the new owner(s) must reapply for the work permit for the workers. The position of non-national workers during the ten week change over period of the permit between named employers is very uncertain.

Given that the 2003 Act created a **criminal offence** for both an employee and an employer where a contract of employment is entered into in the absence of a work permit this issue needs to be urgently addressed. Congress recommends that this *Immigration Bill 2004* be used to provide for adequate protections and defenses for employees relevant to the *Employment Permit Act 2003*.

Restrictions on Employment

Congress is also concerned about the effect of the provisions in Section 4 (6) of the *Immigration Bill 2004* which provide for restrictions on the duration of stay and to engagement in employment, business or a profession in the State. The experience of Congress affiliates has shown that any provisions that have the effect of making it more difficult for non-national workers to freely move between employments can make workers vulnerable to exploitation. This is particularly the case where employers own the permit for the employees. Congress is seeking assurance from the Minister that no restrictions will be placed on non-nationals transferring to different employment or different types of employment during their period of entitlement to work in the State.

Rights of Seafarers

All international law recognises the unique position of seafarers and provides for shore leave along with other entitlements *such as* the permission to transfer to another vessel, permission to leave vessels and for permission to travel to return home. This Bill should explicitly state that all existing rights and entitlements held by seafarers remain in place. In addition Congress recommends that the internationally recognised term of “*seafarer*” be used rather than “*seaman*” as is currently the case in the Bill.

Right to Claim Asylum

The right to claim asylum in the face of persecution, death or imprisonment because of race, religion, sexual orientation, political or trade union activities is enshrined in international law. While Ireland needs to regulate the entry of foreign nationals into its territory this should not be done in a way that contravenes our obligations under international human rights law. Congress is seeking confirmation that the provisions of this Bill do not undermine our ability to meet our obligations under the Geneva Convention and is recommending that the *Geneva Convention* be specifically referred to in **Section 2 Application of the Act**.

Ends