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September 14, 2004

David Manicom
Director, Operational Coordination
International Region
Jean Edmonds South Tower
16th Floor
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Mr. Manicom:

RE: DESIGNATION OF OVERSEAS OFFICES FOR PROCESSING TEMPORARY APPLICATIONS

This is in response to Janet Siddall's letter of July 20, 2004, respecting CIC's proposal to designate overseas offices to process applications for temporary residents visas, work permits and study permits, pursuant to IRPA r.11(2).

CURRENT SITUATION AND PROPOSED CHANGE

Since IRPA came into effect, all processing offices are designated for processing temporary visas and permits. An applicant may access any mission worldwide to apply for a temporary resident visa, work or study permit.

CIC proposes to designate offices for temporary application, as for permanent resident processing designation. With this designation, the applicant could apply only to the mission designated for the country of the applicant's nationality, or for the country where the applicant is present and lawfully admitted.

> Place of application for temporary resident visa, work permit or study permit
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> > 11(2) An application for a temporary resident visa — or an application for a work permit or study permit that under these Regulations must be made outside of Canada — must be

500 - 865 Carling, Ottawa, ONTARIO Canada K1S 5S8
Tel/Tél. : (613) 237-2925 Toll free/Sans frais : 1-800-267-8860 Fax/Télécop. : (613) 237-0185
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made to an immigration office that serves as an immigration office for processing the type of application made and that serves, for the purpose of the application,
(a) the country in which the applicant is present and has been lawfully admitted; or
(b) the applicant's country of nationality or, if the applicant is stateless, their country of habitual residence other than a country in which they are residing without having been lawfully admitted.

Lieu de la demande de visa de résident temporaire, de permis de travail ou d'études

(2) L'étranger qui fait une demande de visa de résident temporaire - ou une demande de permis de travail ou d'études qui, selon le présent règlement, doit être faite hors du Canada - doit la faire au bureau d'immigration qui dessert :
a) soit le pays dans lequel il est présent et dans lequel il a été légalement admis;
b) soit le pays dont il a la nationalité ou, s'il est apatride, le pays dans lequel il a sa résidence habituelle autre que celui □□il n'a pas été légalement admis.

The rationale for this restriction is management of resources (particularly with respect to US missions) and program integrity ("to ensure that decisions are made where the best expertise lies").

Problem with Limiting Flexibility and Access

Designating processing missions on the basis of nationality or present lawful admission restricts options available to applicants for temporary visa or permits. For example, a UK citizen in China on business needing to apply for a work permit for Canada (HRSDC exempt) would be required to submit the application to London or to China-based missions, where now the application can be submitted to the New York consulate and processed quickly and efficiently.

The benefits of limiting access to missions are not evident, and not worth the loss of flexibility to foreign nationals. The rationale of controlling resources (eliminating "offshore" visa requests) and focusing expertise do not appear to be aimed at solving actual problems.

CIC has not provided numbers to demonstrate how elimination of "offshore" applications would impact current inventory of temporary applications at, for example, US based missions. With no prior restriction under the former Immigration Act or under IRPA, we find it difficult to see how this justifies restrictions at the cost of access by legitimate business travelers.

The "local expertise" rationale loses weight in that the proposed scheme would still provide significant flexibility based on local lawful presence. A European traveler with few visa restrictions could access any number of missions worldwide with no local expertise on the country of nationality or country of presence.

Particularly with the recent regulatory change which will allow foreign nationals from visa exempt countries to apply for a work permit at a port of entry, it seems to us that a major drain on offshore visa office resources will be eliminated.

So, "if it ain't broke, don't fix it". We are not convinced of the need for a general restraint on access. If there is a legitimate problem with resources or integrity in a particular region or within

a particular category of applications, then those problems should be addressed by resource allocations to specific missions, focused responses to applications of concern, or limited restrictions on access to affected missions or for particular applications. A general rule for all applicants and all missions is neither necessary nor necessarily a productive response.

Specific Comments

If CIC designates missions for temporary application processing based on nationality or lawful admission and presence, in the manner proposed, the Section makes the following comments on the proposal:

1. Restrictions on access should be minimal. To the largest extent possible, the existing access to all missions, regardless of nationality or lawful admission and presence, should be preserved.

2. Designations restricting access to missions should reflect legitimate resource limitations or applications that present legitimate need for integrity assessment. Designations should therefore be particular rather than general. It is noted that this particularity is inherent in the language of r.11(2) referring to "type of application made".

3. The phrase "present and has been lawfully admitted" should be given a large liberal interpretation. We propose that a definition be developed to include the following:

    - A person lawfully admitted as a visitor, worker or student, and still present in the country remains "lawfully admitted" notwithstanding subsequent termination of status by overstay or any other terminating event (illegal employment, or any ground of inadmissibility).

      This would apply, for example, to applicants in the US who had been lawfully admitted to and are in the US, but who were subsequently denied renewal of their status in the US. These applicants should continue to have access to Canadian missions in the US to seek visas or permits for Canada.

      It would equally apply to persons admitted to and present in Canada, but whose status was subsequently lost, for example, those who failed to extend, or whose extensions were not processed. These persons would continue to have access to US-based missions while resident in Canada.

    - Offshore" applications should continue to be accepted from applicants outside the country who possess visas and passports for travel to the mission location, or who are visa exempt for temporary entry.

    - "Lawful admission" should refer to the genuine admission (i.e. admitted by an authorized person) and not require "looking behind" the admission to determine whether it was validly obtained.

- Persons who are or have been recognized as refugee claimants should be regarded as "lawfully admitted" regardless of the circumstances of the admission to the country of refuge, and regardless of subsequent determination of the claim. Until removal, these persons should be entitled to access the processing missions in the country of refuge.

We ask you to consider our responses and look forward to hearing your further comments.

Yours truly,

(*original signed by Tamra L. Thomson for Wendy Danson*)

Wendy Danson
Chair
National Citizenship and Immigration Law Section