



May 18, 2004

Daniel Jean
Citizenship and Immigration Canada
Assistant Deputy Minister, Policy and Program Development
365 Laurier Avenue West Jean Edmonds South Tower 20th Floor
Ottawa, ON
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Dear Mr. Jean,

RE: Survey concerning Spousal Humanitarian and Compassionate applications

I am writing on behalf of the Canadian Bar Association's National Citizenship and Immigration Law Section (CBA Section).

In our recent telephone call, you advised that a survey of Spousal Humanitarian and Compassionate (H and C) files has been conducted and that the statistics compiled indicate an acceptance rate of 71%. I have forwarded your comments to our executive, and the CBA Section looks forward to reviewing the survey results and analysis that you offered to send to us. You will have now received a letter from Robin Seligman, with enclosed refusals that she has collected for your further assessment and consideration. The CBA Section also looks forward to your response to that letter.

We must emphasize that the suggested 71% acceptance rate does not accord with CBA Section members' personal experience and observations, the trends we have observed, or the anecdotal information we have received through our informal discussions with regional offices across the country. In sharp contrast, since the enactment of the *Immigration and Refugee Protection Act* (IRPA), we are certain that there has been a significant increase in IP5 refusals for spouses in *bona fide* relationships, particularly where there are no children involved. Our experience is that the acceptance rate for these spouses is nowhere near 70%, but has actually dropped significantly since the implementation of IP5 (no presumed hardship).

You will note that the letter and cases gathered by Ms. Seligman show numerous examples of the IP5 test being used to deny *bona fide* spouses where officers have found insufficient demonstrated hardship (in all cases, there is no doubt as to the *bona fides* of the relationship). This is true even in cases where the Federal Court intervened to stay removal to prevent apparent hardship because of medical and emotional need, or where children are involved and the refused applicant is the primary supporter. *Bona fide* partners of Canadians and permanent residents are actually being required to separate and apply abroad, based on the same *bona fide* relationship, because the officers apparently do not see this separation as a hardship under IP5. This is a distinctly higher threshold than under the pre-IRPA guidelines.

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Our national membership also leads us to note strong regional variation, with Ontario showing a higher refusal rate of *bona fide* marriage cases than other regions. In Ontario, *bona fide* cases, even with Canadian children involved, are being refused for reasons of insufficient hardship upon separation.

Accordingly, we seek clarification of the 71% acceptance rate you quoted, and specifically, the following information:

1. How were the decisions for survey obtained? What request was made, and to which offices?
 - a. Did you request a survey of all H and C applications submitted to Vegreville over a fixed time, or of spousal H and C applications only?
 - b. Was a random sampling of a fixed number of applications to Vegreville used, either of H and C applications overall or spousal applications only?
 - c. Was there a similar sampling of referred cases to the major processing offices (Montreal, Toronto, Vancouver)?
 - d. How many cases of spousal H and C were assessed, and by which office?
2. How is the 71% statistic generated? Assuming an adequate sampling of all spousal cases submitted to Vegreville and either processed there or referred to local offices,
 - a. what percentage of cases were favourably processed in Vegreville, without referral?
 - b. for the remaining cases referred to local offices, what is the refusal/acceptance rate for the spousal H and C cases?
 - c. what is the refusal rate of referred cases, where the spouses were found to have been in a *bona fide* relationship? (This is the critical impact of IP5 and the loss of presumed hardship).
 - d. are these statistics available for the business year from April 1, 2003 to March 31, 2004?
 - e. what is the analysis of factors present in those refusals (i.e. children/no children, failed or successful refugee claim)? and
 - f. how do the answers to a, b, and c compare to pre-IRPA rates?
3. How do the rates above differ regionally? by office?

We look forward to receiving your response to our questions about the survey and its results.

Thank you,

(original signed by Gaylene Schellenberg for Gordon H. Maynard)

Gordon H. Maynard
Section Chair

cc William Farrell
Clerk, House of Commons Standing Committee on Citizenship and Immigration