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March 23, 2005

Mr. Andrew Telegdi, M.P.
Chair
Standing Committee on Citizenship and Immigration
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. Telegdi:

RE: Bill C-283 — Sponsorship Bonds for Temporary Residents

I am writing on behalf of the National Citizenship and Immigration Law Section of the Canadian Bar Association (the CBA Section), to urge you not to pass Bill C-283.

While the CBA Section does not reject the concept of visitor sponsorships as a means to allow genuine visitors to enter Canada, we have serious reservations about how Bill C-283 deals with the issue. This Bill concentrates on sponsorships for previously failed visitor applicants, rather than facilitating entry of *bona fide* visitors, whether for family, business or other purposes. Facilitating the entry of visitors to Canada is one of the objectives of the *Immigration and Refugee Protection Act*, “for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities.” [s. 3(1)(g)]

The CBA Section acknowledges a problem with the current system to issue temporary resident visas (TRVs), which must be addressed. In recent years, officers seem increasingly fearful of making a mistake, so they err on the side of caution. Many deserving people are not given the benefit of the doubt and their applications are refused. Refusals have increased substantially. This can create great hardship, including permanent separation of families in Canada from their relatives abroad. In the face of refusals, Canadian family members have little recourse except to ask their Member of Parliament to intervene. MPs’ offices are deluged, and the Minister in turn is besieged with requests from MPs. The process has become unduly politicized.

Allowing bonds to be posted is an attractive and perhaps appropriate solution. However, for many reasons, we cannot support the bill in its present form. We also urge the Minister and Parliament take steps to moderate the culture of caution that has overtaken Canada’s visa offices.

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Purpose of the Bill

Bill C-283 would amend both IRPA and the Regulations to create a new program for sponsorship of foreign nationals applying for TRVs by a Canadian citizen or a permanent resident in Canada. Measures in the Bill purport to allow higher acceptance rates for family visitors in particular, while protecting the integrity of the visitor program as a temporary process, and to prevent queue jumping by potential permanent residents or overstays when the TRV expires.

The proposed program would allow a Canadian citizen or landed immigrant to apply to sponsor a foreign national to visit Canada, if the foreign national had applied for a visa in the previous 12 months and had been denied. If the TRV were granted, the sponsored visitor would have to report to an immigration officer or other government representative within 30 days after leaving Canada. A sponsored visitor who failed to report could not re-enter Canada and the sponsor's deposit or guarantee would be forfeited.

Sponsored visitors would face restrictions not applicable to the general visitor class. They could not extend their authorization to remain in Canada or apply for permanent resident status while in Canada. Further, sponsored visitors could not remain in Canada beyond the time authorized for their stay, even if they married or applied for refugee status while in Canada.

Observations

1. The actual number of foreign nationals who might qualify for this program has not been assessed. Limiting sponsorship to those previously denied a TRV narrows the potential sponsorships to those foreign nationals who officers previously believed would not leave Canada after the expiry of their visa.
2. Qualifying as a sponsor under sections 130 to 136 of the Regulations is very stringent, requiring attainment of low-income cut-off (LICO) levels and other requirements designed for sponsorship of permanent residents in the family class. The same criteria are not necessarily appropriate to sponsor temporary visitors who may or may not be members of the family class.
3. How the guarantee or bond would be calculated is not clear. Under subsection 45(2) the amount is dependent on officer discretion on a case-by-case basis.
4. Implementing any new program requires new administrative processes. Without new resources, processing times for other immigration programs will be even longer.
5. The additional requirement of sponsorship approval will add up to six months to process a TRV, given the track record with parental sponsorships at the Mississauga Case Processing Centre. Even once sponsorship is approved, there is no guarantee that a TRV would be issued, as the officer must only take it into account as an important factor.

6. The onus on the sponsored visitor to verify departure outside of Canada is impractical. Some do not have easy access to a Canadian embassy or consulate. Embassy and consulate staff are already too busy to take on additional tasks.
7. The consequences of failure to report within 30 days are not clearly laid out for the sponsored visitor. The penalty for default — no future entry — is excessive. Enforcing the bond is sufficient. An absolute bar to re-entry would be unfair in cases of innocent breach. Failure to comply could be considered in any future application.
8. Different treatment of sponsored visitors from other visitors is discriminatory. The additional restrictions eliminate the dual intent provisions of IRPA. The requirement to leave Canada even if a refugee claim has been filed is contrary to Canada's international obligations under the *UN Convention and Protocol relating to the Status of Refugees* and the *UN Convention Against Torture*. It is unlikely that sponsored visitors could be stopped from seeking protection. However, the negative consequences for the sponsor would be unfair.
9. Creating the sponsored visitor class could effectively give illegal immigrants in Canada greater rights than sponsored visitors and their sponsors.
10. It seems unduly harsh to prevent extensions from within Canada. Discretion should be maintained to assess all the circumstances, as is now the case. Sponsored visitors should also be able to engage in short term studies not requiring a study permit.
11. Sponsors stand to lose for reasons beyond their control. Default by the sponsored visitor could leave sponsors open to default in innocent situations, as well as where they are duped. The consequences to the sponsor could lead them to policing visitors in ways not anticipated by the Regulations so as not to lose their deposits or guarantees.
12. The sponsorship program looks like another way to collect revenue through application fees that are not used to improve delivery of the immigration program.
13. Visitor sponsorship could easily become a systematic requirement. Officers could simply refuse a TRV application requiring the foreign national to apply a second time with an authorized sponsorship.

Recommendations

1. The CBA Section opposes the creation of a two-tier visitor class based on sponsorship requirements for previously failed applicants for TRVs.
2. If a sponsorship option is introduced for TRVs:
 - a. it must be established in a way that is non-discriminatory to all TRV applicants and their potential sponsors;
 - b. TRVs without sponsorship should be used in all reasonable circumstances and sponsorship should be required only in exceptional circumstances;

- c. it should allow for the sponsorship and TRV applications to be filed and processed together at the overseas post;
- d. sponsorship requirements should not be the same as for sponsoring a permanent resident member of the family class, but should more appropriately address the objectives of the TRV program;
- e. there should be no restrictions on the rights of sponsored visitors, including the right to apply for extensions of the TRV, or to make any other application under IRPA that can be made by other visitors;
- f. the departing visitor should be able to prove departure from Canada at the port of departure, or at an overseas post. Although Canada does not have an exit control system, the Canada Border Services Agency regularly verifies the departure of foreign nationals through the Certificates of Departure;
- g. there should be no absolute bar on reentry where departure is not in accordance with the terms of the TRV, or where the sponsored visitor does not report as required. Failure to comply should be considered in any future application, assessing all the circumstances of the case before refusal; and
- h. in cases of enforcement of a guarantee or forfeiture of a bond, an appeal process should be established to enable the sponsor to prove they used their best efforts to enforce the conditions imposed on them.

We trust that you will take these comments into account, and that the Standing Committee will not recommend the adoption of Bill C-283.

Yours very truly,

(Original signed by Tamra L. Thomson on behalf of Wendy Danson)

Wendy Danson
Chair
National Citizenship and Immigration Law Section

cc. Gurmant Grewal, M.P.
The Honourable Joe Volpe, P.C., M.P., Minister of Citizenship and Immigration