Immigration and Refugee Protection Act — Family Reunification Issues

Overview

- Family unification is a cornerstone of Canada's immigration policy and a stated objective of IRPA [s.3(d)]. Canadians and permanent residents may sponsor their spouse or partner, children, parents and grandparents. The family relationship supports entitlement to a visa – there is no point system based on education, language or other abilities. This distinguishes the family class from "economic" immigrants.

- Canadian immigration policy has diminished the family component of immigration over the past decade. Family-related immigration used to compose near 60% of annual flow. Now it is less than 20%. Policy now favours economic immigrants.

- Pre-IRPA regulatory changes eliminated the "assisted relative" class, narrowed the definition of dependent children, and raised financial requirements for sponsorship. IRPA has further affected family class applications by narrowing discretion in selection processes and introducing unfair exclusion policies.

- Under IRPA, the entitlement of family members to immigrate and remain in Canada is subject to the following exceptions or restrictions:

    - Spouses and children can be denied sponsorship if they were not previously examined when their sponsors came to Canada. There is no humanitarian review to the Appeal Division for the Canadian or permanent resident sponsors.

    - Spouses and partners may be processed from within Canada, but parents and grandparents cannot unless they satisfy an officer that a high standard of humanitarian and compassionate considerations is met.

    - Parents and grandparents are given the lowest priority for overseas processing.

    - Permanent residents deported without appeal under s.64 have no right to any review of humanitarian circumstances, including family circumstances or the best interests of Canadian children affected, regardless of their degree of establishment in Canada or their particular criminal record.

Denying family class membership for no prior examination

IRPR s. 117(9)(d), (10) and (11)

- As a general rule, Canadians and permanent residents can sponsor their spouse or partner and children. There are rare exceptions – the children, spouse or partner must not be inadmissible, for instance by criminality or danger to public health.

- IRPR s. 117(9) prevents children or spouses who were not examined as part of the sponsor's original application from being sponsored, even if otherwise admissible.

- IRPA extended a disqualification for separated spouses or children whose examinations were "waived" to any spouses and children who simply weren't examined, because of waiver or non-disclosure.

- IRPR s. 117(9) is a hard and fast rule, with no appeal. There is no review of humanitarian and compassionate circumstances by the Appeal Division or the Federal Court. CIC officers alone control whether to exercise humanitarian discretion.

- The government wants to set an example – if immigrants don't disclose a dependent, then future sponsorship is forbidden. The reality is that not all failures to disclose are malicious or unforgivable. Situations exist where deliberate failures to disclose merit forgiveness on humanitarian and compassionate grounds. Some examples:
  - Live-in caregivers serve Canadian families, and subsequently obtain resident status and citizenship. Many caregivers, particularly from the Philippines, do not disclose children when they apply for a work permit or residency status. They erroneously believe that their children disqualify them from the program. They left their children with relatives and supported them with earnings from Canada. These children cannot now be sponsored as family class members.
  - Illegitimate children may be unknown to immediate family members. These children may be in the mother's custody, with no intent that they immigrate. Years later the father in Canada wishes to take custody. These children cannot be sponsored.
  - Separated children may be in the divorced former spouse's custody, and even disclosed to the visa officer. Examinations were waived, as there was no intent of immigration. A decade later the mother passes away and the father in Canada wishes to take custody. These children cannot be sponsored.
  - An independent applicant with no family receives a visa, and then marries before obtaining permanent resident status with the intent of sponsoring once settled in Canada. The spouse is disqualified from sponsorship.

- While applicants can apply for humanitarian and compassionate consideration, this is controlled wholly by CIC and the Guidelines offer little guidance.

Recommendation

Disqualification for prior non-examination should be appealable to the Appeal Division. The Appeal Division can assess the deliberateness of the non-examination and determine if there are sufficient humanitarian and compassionate grounds to overcome the refusal. The sponsor and applicant would bear the onus of making a case to overcome the refusal. The Appeal Division provides oversight and balance between the enforcement interest and the inherent interest in joining immediate family members.

Inland Applications for Parents or Grandparents on Humanitarian and Compassionate Grounds

- Parents and grandparents may submit an H & C application for inland processing with or without a sponsorship undertaking. (IP 5, 12.11) Factors the officer should consider include:
  - proof of relationship;
  - what hardship would occur if the application for a visa exemption were refused;
  - level of interdependency, support available in home country (other family members);
  - whether the applicant is able to work; and
  - if there is a significant degree of establishment in Canada

- Discretion is a valuable element of Canada's immigration program, and the "purpose of H & C discretion is to allow flexibility to approve deserving cases not anticipated in the legislation." Yet "the legislation does not provide any explanation or guidance about what constitutes humanitarian and compassionate grounds."

- Applicants must showthat their personal circumstances are such that the hardship of having to obtain a permanent resident visa from outside of Canada would be unusual and undeserved, or disproportionate. (IP 5, 5.1)

- In the past, CIC officers have generally found that, if the only adult children are Canadian citizens or permanent residents, a case could be made for an inland H & C by the elderly parent. Recent decisions suggest that even compelling "only children in Canada" cases are being refused.

- IP 5 sets a very tough standard. The guidelines encourage officers to find that hardship from separation for overseas processing is not unusual, undeserved or disproportionate.

Recommendations

Lengthy processing times for out of Canada parental sponsorships should be taken into account as a factor in assessing inland parental sponsorships.

IP 5 should be revised to reflect a more expansive definition of H & C, such as the reasonable person test derived from *Chirwa v. Canada (Minister of Manpower and Immigration), [1970] I.A.D.D. No.1, 4 I.A.C. 338 (IAB) at para 27:* "those facts, established by the evidence, which would excite in a reasonable man in a civilized community a desire to relieve the misfortunes of another…"

Alternatively, IP 5 should at least specify that when the applicant's only child is in Canada, the H & C application would be generally approved.

Consideration should be given to create in Canada parent class for all parents where a child can meet the required low income cut off (LICO).

Parental Sponsorships

- In view of the 75% reduction in quotas ("targets") over the past two years, it appears that the government is deliberately trying to kill the longstanding program for sponsorship of parents and grandparents.

- The Minister and CIC officials have justified the reduction of parental visas as a ministerial policy to maintain a 60-40 balance between economic and non-economic immigrants. This policy defeats the objective of family reunification in IRPA s. 3(1)(d).

- The Mississauga CPC has processed no new sponsorships of parents or grandparents since June 2003. There is an almost two year backlog in Mississauga and a further overseas backlog of at least two to five years for processing family member applications. We understand the total number of applicants in the queue to be in excess of 100,000. If CIC continues to set a quota of processing only 5,500 applicants per year, it will be close to 20 years before currently filed applications are processed. By then, most applicants will either be dead or medically inadmissible.

- CIC is not being straight about the processing times for parental sponsorships. Its website creates the impression that the Mississauga CPC will process a sponsorship application in a foreseeable time. It says it takes 21 months to process, when not a single application has been processed in almost two years. For several months it has stated that they are now processing applications received on June 24, 2003; this date never changes. In the meantime, Canadian citizens and permanent residents continue to pay high fees to file sponsorships, in the mistaken belief that they will be processed in the foreseeable future.

- The issue of parental sponsorships is a policy decision; a question of values. The government may decide that Canadian values dictate that parents are not integrally part of the family unit and that there is no sufficient policy justification for admitting sponsored parents to Canada. This appears to have been already decided. We believe this is a fundamental issue deserving of public debate.

Recommendations

If CIC is not processing new applications, or most existing applications, they should be up front about it.

If it is the government's intent is to close the parental sponsorship category or to make it a low-priority 5 to 10 year process, then they should be forthright about the policy decision, so that potential immigrants can make informed decisions before immigrating to Canada.

Disparity in Processing Times for Spouses and Partners

- CIC has stated its commitment to adopt a six-month processing standard for family class applications for spouses, partners and dependant children. "The aim is that one year after full implementation of Family Class Redesign it will be possible to achieve the six-month service standard for the processing of both the sponsorship and immigrant applications for 80% of the FC Redesign applications." (See OP 02-48 and IP 02-11, July 2002)

- In February 2003, the Minister announced "the process (for sponsoring spouses/partners and dependent children living outside Canada) will be improved further by introducing a new joint application kit that allows for concurrent processing of medical examination results and sponsorship applications."

- CIC's posted statistical information for 2004 shows that the processing times for spouses vary greatly from different visa offices: 80% of cases are finalized in three months in New Delhi, four months in Beijing, 30 months in Accra, 26 months in Abidjan, 22 months in Bogotá and 20 months in Buffalo. http://www.cic.gc.ca/english/department/times-int/05-fc-spouses.html

- The disparity in processing times does not appear to be related to issues of program integrity, given that two of the busiest offices where fraudulent or unreliable documents occur can process spousal applications in three or four months.

- Factor in the additional one month processing time for the sponsorship application at the Mississauga CPC, and the six-month service standard to process 80% of sponsorship and immigrant applications for a spouse or partner is not met at most visa offices.

Recommendations

CIC should review the disparity in processing times at visa offices, and implement measures to process applications for spouses or partners consistently at all visa offices.

Applications should be finalized within one year, given that the medical examination is generally valid for only one year, and must then be redone at the applicant's expense.

No Appeal for Inadmissibility for Serious Criminality — IRPA s. 64(2)

- The arbitrary nature of IRPA s. 64(2) negates the objective of family reunification in IRPA s. 3(1)(d). Despite representations made by the Minister and CIC officials to this committee when IRPA was reviewed, there is no effective process for reviewing all of the circumstances of a case before a person is automatically ordered deported without a hearing. Permanent residents who have strong family ties in Canada are being removed from Canada without any formal consideration of their circumstances.

- The CBA warned this committee against taking away appeal rights and not requiring a formal review procedure for permanent residents facing loss of status due to criminality. In response to our criticism, the Minister and CIC officials assured this committee that there would be a full and fair review prior to a permanent resident being taken to inquiry and that this review would include equitable considerations.

- In the absence of legal safeguards in the act and regulations, there is no assurance of due process and fair consideration of all relevant circumstances prior to deportation. There is no set procedure, no consistent practice, no guarantee of formal notice, no disclosure of all relevant materials so that the person knows the case they have to meet. The Federal Court has ruled in three recent cases that the IRPA and IRPR do not require any review of the circumstances prior to taking a person to inquiry. This leaves a legal vacuum where injustice can and does occur and where people are separated from their families in Canada.

Recommendation

The CBA Section recommends that regulations limit the scope of IRPA s. 64(2) to ensure that no one is taken to an inquiry whose result would deny appeal rights without first having a formal review of all the circumstances of their case (the *Ribic* factors). In the absence of regulations, we recommend that the CBSA revise their policy for dealing with these cases, to ensure compliance with rules of fairness and natural justice.