



July 22, 2009

Bernard Alladin
Director, Operational Information Management
Citizenship and Immigration Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Mr. Alladin,

Re: IMM1249 Section F – Declaration of Applicant and Notice Regarding Personal Information

We are writing on behalf of the Canadian Bar Association's National Citizenship and Immigration Law Section and the Privacy Law Section (CBA Sections) to discuss our concerns regarding the recent changes to form IMM 1249 – Application to Change Conditions, Extend my Stay, or Remain in Canada (the Form), specifically amendments to Section F – Declaration of Applicant and Notice Regarding Personal Information.

We have concerns that the Form does not give applicants sufficiently clear information about the circumstances in which the government may disclose their personal information. This is particularly important in immigration cases, as the first language of applicants may not be English or French, and they may not have a full understanding of Canadian privacy laws. We understand that Citizenship and Immigration Canada is considering amending or replacing the Form to ensure that it is consistent with the *Privacy Act*. We hope our comments will assist in that review.

Background

Section F of the Form contains the following statements:

Notice Regarding Personal Information

- The information you provided in this application is collected under the authority of the *Immigration and Refugee Protection Act* and will be used to maintain a record of applications and sponsorship undertakings for the purpose of the administration of the Act. It will be retained in Personal Information Banks CIC PPU 051 or CIC PPU 053 or CIC PPU 054 depending on the type of application made. *The information may be shared with other organizations such as the Canada Border Services Agency (CBSA), the*

Royal Canadian Mounted Police (RCMP), the Canadian Security and Intelligence Service (CSIS), and foreign governments in accordance with subsection 8(2) of the Privacy Act. In accordance with the *Privacy Act* and the *Access to Information Act* individuals have the right to protection of and access to their personal information. Details on these matters are available at the Infosource website (<http://www.infosource.gc.ca/>) and through the Citizenship and Immigration Call Centre. Infosource is also available at Public Libraries across Canada. [Emphasis added]

- I consent to the release to CIC and CBSA of all records and information for the purpose of processing my request that any governmental authority, including police, judicial and state authorities in all countries in which I have lived may possess about me. This information will be used to evaluate my suitability for admission to Canada or to remain in Canada pursuant to Canadian legislation.

The Form also requires the applicant to declare that the information provided is “truthful, complete and correct” and acknowledge that making a false statement is an offence under the *Immigration and Refugee Protection Act*. It also states that, “By signing this Section, I consent to the release of information and I declare that the information I have given in this application is truthful, complete and correct,” and that a failure to provide consent means that the application will not be processed.

Section 8 of the *Privacy Act* sets out a blanket prohibition against government institutions disclosing personal information under its control, subject to a number of exceptions in subsection (2). These exceptions include disclosure “for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose,”¹ for any other purpose in accordance with another federal Act or regulation that authorizes its disclosure,² for the purpose of complying with a subpoena or warrant,³ to an investigative body specified in the regulations “for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation,”⁴ or pursuant to an agreement with a foreign state “for the purpose of administering or enforcing any law or carrying out a lawful investigation.”⁵

Discussion and Recommendations

In reviewing the updated Form in the context of s. 8(2) of the *Privacy Act*, we believe CIC should consider the following issues.

- **The current language of the Form is ambiguous as to whether all disclosure, or merely disclosure to foreign governments, is limited by subsection 8(2) of the *Privacy Act*.**

The CBA Sections recommend the following modification to make clear that CIC will disclose personal information to domestic entities only as allowed by s.8(2) of the *Privacy Act*:

Any disclosure by CIC to the CBSA, the RCMP, or CSIS shall be governed by subsection 8(2) of the Privacy Act.

¹ *Privacy Act*, s.8(2)(a).
² *Privacy Act*, s.8(2)(b).
³ *Privacy Act*, s.8(2)(c).
⁴ *Privacy Act*, s.8(2)(e).
⁵ *Privacy Act*, s.8(2)(f).

Disclosure to foreign governments is the subject of separate comments below.

- **The Form does not clearly outline the limited purpose for which the information is collected and disclosed.**

The Form does not contain any clause indicating the purpose of the disclosure of information to the agencies listed on the form, and has only a general statement regarding the purpose for the original collection of the information. If CIC wishes to rely on s.8(2)(a) to authorize the disclosure of personal information to outside agencies, then the form should state the original purpose for the collection and any subsequent disclosure of information with greater precision. We recommend the following wording:

The information you provided in the application is collected under the authority of the *Immigration and Refugee Protection Act* and will be used to assess, process and maintain a record of applications and sponsorship undertakings for the purpose of the administration of the Act. Personal information may also be used to support the effective administration and enforcement of Canada's citizenship and immigration programs, including the investigation of matters relating to program abuse, criminality, as well as public safety and health. It will be retained in the Personal Information Banks CIC PPU 051 or CIC PPU 053 or CIC PPU 054 for [specify time period] depending on the type of application made.

- **It is unclear whether CIC intends to rely on any additional legislative authority for disclosure. Further, the public is unable to access CIC's Privacy and Access to Information Manuals online.**

If CIC intends to rely on any other legislative provisions permitting the disclosure of personal information, we recommend that these provisions be included in the Form, or at the very least, that there be a summary or reference to these provisions.⁶ This would more fully inform the applicants of the circumstances that may permit disclosure of their personal information.

Similarly, we recommend that the CIC Privacy Manual and the CIC Access to Information Manual be made available online and referenced in the Form. This is important for the public to have easy access to the rules and policies on the disclosure of personal information, and to understand, in practical terms, how personal and confidential information is handled.

- **It is unclear whether CIC intends to rely on subsections 8(2)(c) and (e) of the *Privacy Act* to disclose personal information in accordance with a foreign investigation, warrant or subpoena.**

Subsections 8(2)(c), (e) and (f) of the *Privacy Act* permit CIC to disclose information to a foreign government or entity in accordance with a warrant, subpoena, or "lawful investigation." We are concerned that the phrase "lawful investigation" could include investigations by foreign governments which run contrary to Canadian public policy. We do not think that information should be disclosed in such cases. For example, the "one child" laws in the People's Republic of China, Sharia law that governs many countries in the Middle East, laws regulating sexuality in a number of countries, the legal persecution of religious and other identifiable groups in some parts of the world, and other laws

⁶ For example, reference could be made to any regulations under IRPA s.150(1)(b) (empowering regulations to be enacted relating to "the disclosure of information for the purposes of national security, the defence of Canada or the conduct of international affairs...").

inconsistent with Canadian laws and values of inclusion and equality, could all produce warrants, subpoenas or “lawful investigations” resulting in demands for information held by CIC. We believe that it would be a breach of public policy, as well as a potential violation of the applicant’s privacy rights, to disclose information to foreign governments to allow persecution of applicants or their families in accordance with these laws. CIC should clarify that it will not rely on s.8(2)(c) and (e) to disclose personal information from immigration applications to foreign governments.

If disclosure to foreign governments is allowed, it should be governed solely by the test set out in subsection 8(2)(m) of the *Privacy Act*: (i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure; or (ii) disclosure would clearly benefit the individual to whom the information relates. These criteria would require a case-by-case approach to disclosure, and would address our concerns. Accordingly, we suggest that the portion of the Form relating to disclosure to foreign governments be amended to read:

Any disclosure to a foreign government will be governed in accordance with subsection 8(2)(m) of the *Privacy Act*.

- **The form could lead to confusion regarding the purpose of the consent.**

In our view, including both the notice regarding CIC’s disclosure of information to other entities *and* the consent to the collection of information by CIC and CBSA from other government authorities under the heading, “Notice Regarding Personal Information” could lead to confusion.

We understand that CIC’s intent is to rely on the *Privacy Act* to permit the disclosure of information to other entities, rather than seeking an applicant’s consent. Further, the wording of the consent in the Form refers to the *collection* of information by CIC and CBSA. This is appropriate, as s.5(1) of the *Privacy Act* requires a government institution to obtain information for an administrative purpose about an individual directly from that individual, unless it obtains authorization.

However, the inclusion of the consent for collection under the same heading as the notice regarding disclosure, coupled with the general references to “consent to the release of information” under the declaration, could mislead applicants into believing that they are signing a consent for both *collection and disclosure*. We recommend that a new heading entitled “Consent for the Collection of Information from Other Government Authorities” be added above the consent. Additional clarification should be added to references about the consent under the declaration.

Recommended Revised Language for Notice Regarding Personal Information

To summarize, we recommend the following changes to the Form:

Notice Regarding Personal Information

The information you provided in the application is collected under the authority of the *Immigration and Refugee Protection Act* and will be used to assess, process and maintain a record of applications and sponsorship undertakings for the purpose of the administration of the Act. Personal information may also be used to support the effective administration and enforcement of Canada’s citizenship and immigration programs including the investigation of matters relating to program abuse, criminality, as well as public safety and health. It will be retained in the Personal Information Banks CIC PPU 051 or CIC PPU 053 or CIC PPU 054 for [specify time period] depending on the type of application made.

The information may be shared with other Canadian government organizations such as the Canada Border Services Agency (CBSA), the Royal Canadian Mounted Police (RCMP), and the Canadian Security and Intelligence Service (CSIS). Any disclosure by Citizenship and Immigration Canada (CIC) to the CBSA, the RCMP, or CSIS shall be governed by subsection 8(2) of the *Privacy Act*. Any disclosure to a foreign government will be governed by subsection 8(2)(m) of the *Privacy Act*. Such disclosure is outlined in CIC's Privacy and Access to Information Manuals available online at: [website].

Consent to the Release of Information from Other Government Authorities

- I consent to the release to CIC and CBSA of all records and information for the purpose of processing my request that any governmental authority, including police, judicial and state authorities in all countries in which I have lived may possess about me. This information will be used to evaluate my suitability for admission to Canada or to remain in Canada pursuant to Canadian legislation.

Declaration of Applicant

- I declare that the information I have given in this application is truthful, complete and correct.
- I understand that making any false statement is an offence under section 127 of the *Immigration and Refugee Protection Act*. Any false statement may be grounds for removal and may result in inadmissibility.

I have read and understood the Notice Regarding Personal Information and Consent to the Release of Information from Other Government Authorities.

...

By signing this Section, I consent to the release of information to CIC and CBSA from other government authorities, and I declare that the information I have given in this application is truthful, complete and correct.

Signature of Applicant: _____

Date: _____

We would be pleased to discuss our comments with you at your convenience.

Yours truly,

(Original signed by Kerri A. Froc for Baerbel Langner)

Baerbel Langner,
Chair, National Citizenship and Immigration Law Section

(Original signed by Kerri A. Froc for Noela J. Inions)

Noela J. Inions
Chair, National Privacy and Access Law Section