



March 2, 2011

Via email: cimm@parl.gc.ca

Mr. David Tilson, M.P.
Chair
Standing Committee on Citizenship and Immigration
131 Queen Street, Room 6-36
Ottawa, ON K1A 0A6

Dear Mr. Tilson:

Re: Immigration Application Process Wait Times for Investor Class and Family Class

I write on behalf of the Citizenship and Immigration Law Section of the Canadian Bar Association (CBA Section) in response to the Standing Committee on Citizenship and Immigration's invitation to participate in its study on immigration application process wait times. The CBA Section is pleased to provide some practical recommendations as to how Citizenship and Immigration Canada (CIC) might alleviate the impact of long wait times for applicants in the family class and investor class.

Family Class Processing Delays

i. Parents and Grandparents (FC4 Category)

One of the objectives of Canadian immigration is to see that families are reunited in Canada.¹ Unfortunately, long processing delays associated with non-priority family class applications, particularly by parents and grandparents in the FC4 category, render applications in this category both onerous and impractical. With processing delays that routinely span six years or more, it is all too common for applicants to die or develop serious medical conditions that render them inadmissible to Canada before they can be processed for permanent residence.

Unless processing targets are amended and additional resources dedicated to processing FC4 cases, CIC should provide practical options for families who wish to reunite on an interim basis.

CIC has encouraged visa officers to be more flexible in issuing multiple-entry Temporary Resident Visas (TRVs) to parents and grandparents who wish to reunite with their Canadian families while their application for permanent residence is processed². The doctrine of dual intent in s.22 of the *Immigration and Refugee Protection Act* makes clear that an applicant's intention to become a permanent resident does not preclude them from becoming a *bona fide* temporary resident.

¹ S. 3(1)(d), *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Overseas Processing Manual OP11, s.5.4

Nevertheless, our members continue to report that parents and grandparents are routinely denied temporary admission to Canada on the basis that they lack ties to their country of birth.

The CBA Section recommends that CIC set clear and objective criteria for visa officers to consider when assessing an application for “early admission” TRV by parents and grandparents who wish to reunite with their family in Canada during processing of their application for permanent residence. We recommend that multiple-entry TRVs and long term visitor records be issued to family class applicants who can meet the following criteria:

- a) they have been sponsored for permanent residence by an eligible member of their family;
- b) their sponsor meets minimum income requirements;
- c) they are not medically inadmissible; and
- d) they have private health coverage.

Parents should be required to see a designated medical physician to have the immigration medical examination performed prior to submitting the sponsorship application, as is the case with spousal sponsorships. The 1017 EFC form would then be a mandatory part of the sponsorship application.

Once an applicant has been approved for a TRV on these criteria, we further recommend that CIC should not revisit the determination regarding medical admissibility when the application for permanent residence is eventually decided. As a matter of procedural fairness, it is untenable to exclude an applicant on medical grounds where they have established their admissibility at the beginning of the process, solely because their health has deteriorated during the lengthy processing of their application.

Our final recommendation is that the FC4 application be amended to allow both parents to be listed as principal applicants. At present, applicants in the FC4 category must designate one parent as the principal applicant and the other parent as accompanying spouse. This creates a serious problem where an entire FC4 application is refused (often after lengthy processing delays) because the principal applicant has died before processing can be finalized, even where the remaining parent still seeks to immigrate to Canada.

ii. Spouses, Common-law Partners, Conjugal Partners and Dependent Children (FC1 Category)

With respect to family class applications in the high-priority FC1 category (spouses, common-law partners, conjugal partners and dependent children), processing times should not exceed 12 months, and processing within six months would be preferable. Our preliminary research indicates that many visa offices are currently meeting this objective in relation to well-documented applications. However, according to CIC's own admission from data provided on their website, numerous others are not.

Federal Court jurisprudence confirms that the Immigration Appeal Division (IAD) has jurisdiction to consider all aspects of a decision to refuse a family class application, including issues that were not specifically raised by the visa office. However, to reduce the likelihood of multiple appeals in some cases, we recommend that visa officers be encouraged to address the substance of the entire application in reasons for refusal.

It is our understanding that redetermination decisions following successful IAD appeals will now be processed at national headquarters rather than by the visa office that rendered the initial refusal.

We commend CIC on this initiative and recommend expansion of this pilot project to include all missions as soon as possible. Centralized processing of IAD redetermination decisions will provide a faster and more efficient way to handle cases that have already been delayed long enough, particularly if appellants are invited to submit updated police clearance certificates and application forms to the Minister's representative at the conclusion of the hearing.

Investor Class Processing Delays

Long processing delays in the investor class seriously undermine the viability of this program as a whole. The danger with long wait times is that Canada will cease to attract applicants with the greatest potential to make significant financial contributions, and investment programs in other countries will become the unintended beneficiaries.

Assuming that delays in processing of investor class applications are due in part to the burden CIC undertakes of assessing business experience and source of funds, we recommend that applicants in the investor program be given the option of providing an expert report from an authorized third party accounting or financial institution to verify the value of their business and the source of funds. In this way, the applicant would bear the expense of the examination, and the work (and specialized expertise) required of the visa officer will be reduced. This model of delegating discrete portions of the examination to industry experts has been adopted by CIC in other areas. For example, with applicants providing third party language testing results, visa officers no longer bear the burden of assessing language proficiency.

As with FC4 applicants, we recommend that investors have the opportunity to obtain early admission to Canada once a preliminary assessment has been carried out on their application for permanent residence. This model has been used successfully in British Columbia, where applicants in the Provincial Nominee Program can obtain a work permit following approval of their application for nomination. A similar approach could be taken with the investor program, where applicants could obtain a work permit as soon as a determination has been made about the source of funds and value of their business, following which the applicant could come to Canada and start investing. They would therefore be less likely to take their investment capital elsewhere during the lengthy processing of their application for permanent residence.

These strategies could also be employed in the entrepreneur class, which is similarly hampered by long delays and huge processing backlogs. If the government has determined that the investor and entrepreneur classes are beneficial to Canada, immediate steps should be taken to ensure that CIC can process applications in a reasonable timeframe.

Conclusion

We appreciate the opportunity to provide our comments regarding immigration application process wait times, and hope they assist the Committee in preparing its report.

Yours truly,



Chantal Arsenault
Chair, National Citizenship and Immigration Law Section