



February 11, 2015

Via email: Matthew.Graham@cic.gc.ca

Matthew Graham
Acting Director
Citizenship and Immigration
Immigration Branch
Economic Immigration Policy and Programs Division
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Mr. Graham:

Re: Procedural Questions related to the new Caregiver Program

I write on behalf of the National Immigration Law Section of the Canadian Bar Association (the CBA Section). The CBA is a national association of over 36,000 lawyers, notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. The CBA Section comprises lawyers whose practices embrace all aspects of immigration and refugee law.

The CBA Section wrote on November 27, 2014¹ with our response to the changes to the Live-in Caregiver Program (now the Caregiver Program) announced on October 31, 2014 and implemented on November 30, 2014.² While we have not received a formal reply to that letter yet, we spoke to you about it on January 15, 2014, and you invited us to submit additional procedural questions in writing for your review and response. Our questions are detailed below, grouped by subject matter for ease of reference.

Caps for Admission and “Cumulative Duration” Exemptions

1. Could you clarify when these caps will be imposed and how they will be administered?
2. Will the caps be formally introduced via Ministerial Instructions (MI) or through amendments to the Immigration and Refugee Protection Regulations (IRPR)?
3. Will cap information be tracked, updated and be publicly available, similar to how CEC and FSW caps were posted previously?

¹ [Letter to Matthew Graham dated November 27, 2014.](#)

² Government of Canada, News Release, “[Improving Canada's Caregiver Program](#)”; Backgrounder, “[Improving Canada's Caregiver Program.](#)”

4. How will the system ensure that those who qualify past the cutoff point are not prejudiced?
5. How will the caps operate in conjunction with the maximum four year “cumulative duration cap” for low-skilled workers? For example, caregivers may be locked out after they have completed the work experience requirements. Will there be a new exemption from this cap for caregivers who receive Approval in Principle (AIP) under the new caregiver categories so they do not “cap out” while waiting for the final permanent residence decision?

Labour Market Impact Assessment (LMIA) Exemptions

6. Will there be a LMIA exemption for caregivers seeking to extend their work permits with the same employer?
7. There is no longer a working LMIA exemption for caregivers who meet the requirements under the new caregiver permanent residence classes (IRPR section 207(a)). Will one be added?

Priority Processing

8. Will there be a protocol to allow priority processing of work permits for urgent employer needs or caregivers fleeing abuse?

Initial Work Permits

9. What will be the duration of initial work permits?
10. What are the requirements to apply for these work permits now that IRPR section 112 has essentially become obsolete (in terms of education, training, language and employer ability to pay and need for caregiver, etc.)?
11. Will the SPEAK test still be required in the Manila visa office?
12. How will applicants who have been issued LMIA's under the old regime but have not yet applied for their work permit be treated? Will they be assessed under IRPR section 112?
13. Will eligibility rules for caregivers be standardized? For example, the Manila visa office requires SPEAK test be completed, and other visa offices do not generally require caregivers to attend interviews.

Changing Employers

14. Would the government consider an open, non-sector-specific permit for caregivers? If it were easier for caregivers to change positions, they could complete program requirements faster.

Permanent Residence Application

15. Can applicants apply for permanent residence under the new caregiver categories regardless of whether they are inside or outside Canada (as is the case with the CEC)?
16. Could you confirm that that the Caregiver Program will not be processed under the Express Entry (EE) system? We believe this category should not be added to the EE system as caregivers are already highly vulnerable and need more certainty about their immigration. This is particularly the case for caregivers who are subject to the four year work permit cap.
17. One of our members communicated with the immigrationrepresentatives@cic.gc.ca group and was advised that permanent residence applicants in the new caregiver classes will not

be eligible for an open work permit on receipt of their application for landing, but they may be eligible for bridging open work permits. Is this correct? If so, will the criteria for bridging open permits³ be updated accordingly?

Educational Credential Assessment (ECA)/Language Requirement

18. Will CIC facilitate caregivers obtaining study permits in light of the fact some applicants may need to upgrade their education to meet permanent residence requirements?

The current operation manuals for the former regime indicate that caregivers must show that their studies will not compromise their work. In our view, this requirement is misplaced, as it is not required of other temporary foreign workers.

19. Under the MI, caregivers do not receive credit for any period of work they complete while also studying full-time (even language studies). What is the rationale for this requirement?

A caregiver may work 8am to 4pm and then engage in full-time studies after work. We see no rationale for discouraging this. Operational Manual 14 indicates that full-time study equates to 25-30 hours per week, which a caregiver could complete in the evenings and weekends while working full-time. Permitting these studies would facilitate an easier transition once they are granted permanent residence. And will the same definition of full-time study apply to cases processed under the new MIs?

20. The CIC website currently states that caregivers are entitled to study under certain circumstances⁴. However, it makes no mention of the potential under the new MI that work experience accumulated while a caregiver is studying full-time work will be disallowed if they apply for landing in one of the new categories – even if they meet the work experience requirements. This could be extremely damaging to caregivers seeking to study while working. Will this section be updated?

Documentary Evidence for Language Ability and Education

21. CIC made clear that permanent residence applications under the caring for children class or the caring for people with high medical needs class will not be processed if original language test results and original Educational Credential Assessments (ECAs) are not provided when applying for permanent residence. However, the CIC call centre is apparently advising applicants these documents can be provided after submission of their permanent residence applications. Could you clarify which is correct?

Second Medical

22. Will there continue to be an exemption to the requirement to perform a second medical? IRPA section 30(1)(a) currently refers to the Live-in Caregiver Class (LICC) only. If not, would CIC be willing to extend the life of the initial medical results?

Accompanying Dependent Work Permit/Visitor Records

23. Could you clarify whether accompanying spouses/dependents of caregivers (low-skilled classification) will be permitted to obtain work permits or study permits as accompanying

³ Online at www.cic.gc.ca/english/resources/tools/temp/work/prov/bridging.asp.

⁴ Online at www.cic.gc.ca/english/helpcentre/answer.asp?q=245&t=17.

dependents, or whether they must qualify in their own right? If they have to qualify in their own right, will the pre-disposition barring their entry be removed as long as there is proof of sufficient financial means pursuant to Operational Bulletin 25?

24. Could you confirm that accompanying dependents of caregivers who are approved under high-skilled categories are eligible for work permits pursuant to IRPR section 205(c)(ii)?

Wages Paid

25. Why has CIC deviated from the general “work” definition in the IRPR for the caregiver categories (“an activity for which wages are paid or commission is earned, or that is in direct competition with the activities of Canadian citizens or permanent residents in the Canadian labour market”)? The effect of the new definition might be to disqualify caregivers from obtaining permanent residence because their employers have exploited them.

Caregivers from Québec

26. What evidence will caregivers who have accumulated their qualifying work experience in Québec need to provide to demonstrate that their intent after landing is to live outside the province of Québec?
27. Is any information available about what will happen to caregivers working as caregivers in Québec who intend to live in that province after they become permanent residents?

Thank you very much for your willingness to respond to our questions. Please do not hesitate to contact us if you require clarification or wish to discuss any of the above.

Yours truly,

(original signed by Eugene Oscapella for Deanna L. Okun-Nachoff)

Deanna L. Okun-Nachoff
Chair, National Immigration Law Section