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Via email: Minister@cic.gc.ca; ralph.goodale@parl.gc.ca

The Honourable John McCallum, P.C., M.P.
Minister of Immigration, Refugees and Citizenship
Citizenship and Immigration
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The Honourable Ralph Goodale, P.C., M.P.
Minister of Public Safety and Emergency Preparedness
Public Safety and Emergency Preparedness
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Dear Ministers:

Re: Administrative Deferral of Removal applicability and Timelines for written responses of ADR denials by Canadian Border Service Agency

In May 2016, members of the Canadian Bar Association Immigration Law Section (the CBA Section) met with Immigration, Refugees and Citizenship Canada (IRCC) and Canadian Border Service Agency (CBSA) officials in Ottawa. To further that discussion, I raise two issues for your consideration: expanding the definition of Administrative Deferral of Removal (ADR); and timelines for written responses to the denial of ADR by CBSA.

ADR POLICY – Addressing new situations of inadmissibility

IRCC's Operational Manual Inland Processing 8, Appendix A: *Spouse or Common-law partner in Canada Class* (IP8, Appendix A) contains the *Public Policy Under 25(1) of IRPA to Facilitate Processing in accordance with the Regulations of the Spouse or Common-law Partner in Canada Class*. This policy was developed to accommodate applications for permanent residence by spouses and common-law partners who are inside Canada. It was intended to facilitate processing for all genuine out-of-status spouses.

Section F of IP8, Appendix A states that a temporary administrative deferral of removal applies to applicants who qualify, unless the applicants:

- Are inadmissible for security (A34), human or international rights violations (A35), serious criminality and criminality (A36), or organized criminality (A37);

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- Are excluded by the Refugee Protection Division under Article F of the Geneva Convention;
- Have charges pending or in those cases where charges have been laid but dropped by the Crown, if these charges were dropped to effect a removal order;
- Have already benefited from an ADR emanating from a spousal application requesting humanitarian and compassionate consideration;
- Have a warrant outstanding for removal;
- Have previously hindered or delayed removal; and
- Have been previously deported from Canada and have not obtained permission to return.

However, our members report situations where CBSA denies an ADR to applicants inadmissible for other reasons. We believe recent legislative changes created new categories of inadmissibility not contemplated when the policy was implemented. Two specific examples include:

1) Students with a valid study permit who are not studying

To meet the conditions of a study permit, a student must now actively pursue their course or program of study (*Immigration and Refugee Protection Regulations*, s. 220.1). Our members report that applicants who are inadmissible for contravening this requirement are excluded from consideration under ADR. In one situation, a woman sponsored by her husband had stopped her studies due to pregnancy.

Under current ADR implementation, applicants who have worked without authorization can benefit from ADR. Excluding students who are not studying seems contrary to the intent of the policy.

2) Refugees subject to cessation of protection

ADR applies to persons whose refugee claims have been refused. But protected persons who become inadmissible because their protection has ceased pursuant to *Immigration and Refugee Protection Act*, s. 40.1 are being excluded. Again, this seems to be contrary to the intent of the policy. Take the example of an applicant living in Canada with valid status as a protected person for many years, who then loses their status due to a brief return to their country of origin. Why would this long-term Canadian resident be excluded from the ADR, when a recently-arrived refugee claimant who is refused status is fully covered?

CBA Section Recommendations

Update IP8, Appendix A to clarify that the ADR applies to situations other than those specifically enumerated.

In the interim, issue an operational bulletin to CBSA officers to clarify that the ADR does apply to applicants in the above situations.

JUDICIAL REVIEW APPLICATIONS AND STAY MOTIONS OF ADR DECISIONS – proposal for timelines

Currently no timeline exists for CBSA to issue a decision on an ADR request. Without a clear timeline for CBSA response, counsel must often file stay motions before a decision is reached. There is conflicting jurisprudence on whether the Federal Court should accept judicial review application and stay motions without a decision, so counsel must decide whether to wait for a response that could come at the last minute, or preemptively prepare the stay materials.

This situation is inefficient for all parties. The CBA Section would support agreed-on timelines for these matters. For instance, if a deferral request is filed at least 20 days before the removal date, CBSA would issue a decision at least 10 days before the removal date. This would allow sufficient time for the stay motion to be filed on the scheduled motion date. Clear timelines would eliminate confusion and create efficiencies for the Federal Court and the parties. Emergency stay motions would still be needed, but the number would likely be reduced.

We would be pleased to participate in future stakeholder discussions on this issue.

CBA Section Recommendation

Convene discussions with the Federal Court, Justice Canada, CBSA, CBA and other relevant stakeholders to work towards mutually beneficial timelines.

We thank you in advance for considering these issues and look forward to continuing to work with you.

Yours truly,

(original signed by Kellie Krake for Vance P. E. Langford)

Vance P. E. Langford
Chair, CBA Immigration Law Section