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November 1, 2018

Via email: Bruce.Scofield@cic.gc.ca

Bruce Scofield
Director General
Immigration Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Mr. Scofield:

Re: Spousal Sponsorship Process

I am writing on behalf of the Canadian Bar Association Immigration Law Section (CBA Section) to provide input on Immigration, Refugees and Citizenship Canada's spousal sponsorship process.

The CBA is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Immigration Law Section is comprised of over 1,000 lawyers, practicing all aspects of immigration law and delivering professional advice and representation in the Canadian immigration system to clients in Canada and abroad.

In recent years, improvements to the spousal sponsorship process have greatly enhanced the lives of many Canadian families. We congratulate Immigration, Refugees and Citizenship Canada (IRCC) for its efforts in this area, and offer a number of suggestions for improvement, particularly on the timeliness of open work permit applications, addressing minor defects in applications, and problems with submitting documents.

RECENT IMPROVEMENTS

IRCC instituted a number of changes to the spousal sponsorship process in 2016. Notable positive changes to the process include:

Decreased processing times

Sponsored spouses and common-law partners from certain countries could expect to wait two or more years for processing of their applications. That wait has been reduced to an average of one year.

Removal of distinctions between in-Canada and Family Class sponsorship applications

In-Canada and Family Class applications were made using different forms and checklists. Different processing times also applied. It was a positive development to merge the streams (at least in terms of the forms and checklists) and to apply consistent standards for processing time.

Clarifying evidentiary expectations

Applicants were not advised how many relationship photos and records of communications to provide, sometimes submitting hundreds of photos, emails, chat logs and phone records to establish the spousal relationship, still unsure if it was enough. The checklist now has more guidance on the documentary evidence required.

Requesting most items at the start of the process

The most recent version of the checklist requires almost all application material, including police certificates and the IMM 5669 form, to be provided at the start of the application process. This is preferable to requesting various required forms and documents at different stages of the process.

While the sponsorship process has improved significantly in recent years, there is still room for improvement in the following areas.

OPEN WORK PERMIT PROCESS

Out of Status Applicants Not Receiving Work Permits Until Late in Process

It is difficult for out of status sponsored spouses to obtain open work permits in a timely manner. In many cases, an out of status sponsored spouse will either not obtain a work permit, or only at the end stage of their permanent residence application, seemingly because this kind of application does not give rise to approval in principle by IRCC. By this point, the processing time for the work permit will exceed the remaining processing time for the sponsorship application. This creates a disincentive for out of status sponsored spouses to apply for an open work permit due to the perception that it will be a waste of time and money.

Most sponsored spouses (and common-law partners) will eventually obtain permanent residence. It benefits Canada to facilitate their integration into Canadian society by approving their work permits earlier. In many cases, families will suffer financial hardship while a sponsored spouse waits for a work permit. Since provincial health care tends to be tied to immigration status, many out of status sponsored spouses suffer from untreated health conditions or have to pay out of pocket for health care.

Ironically, when it comes to applying for open work permits, Canadian immigration policies often benefit foreign spouses of foreign national students and skilled workers more than foreign spouses of permanent residents and Canadian citizens. While IRCC has made great strides in reducing processing times for sponsorship applications, this is only a half measure in achieving the goal of speedy family reunification. Family Class sponsored spouses and partners regularly have to wait outside of Canada while a sponsorship application is processed. While separation for a year is better than separation for two or three years, it is still a tremendous hardship for a married couple. For these reasons, IRCC should consider extending the availability of open work permits to spouses being sponsored overseas through the Family Class stream.

Applicants in the in-Canada stream are often financially and medically vulnerable during the sponsorship processing stage, which can be particularly acute for female applicants. A sponsored

woman may become pregnant during the processing of a sponsorship application. If she is unable to obtain health care, it puts the safety of her and her child at risk. In addition, a sponsored spouse with a work permit can have some degree of financial independence from her spouse, but a sponsored spouse without a work permit is completely beholden to her spouse for financial support. This increases the risk of abuse, likely more acutely felt by women.

Recommendation: All sponsored spouses, whether in status or out of status, should be eligible to receive open work permits within six to eight weeks of submission of in-Canada spousal sponsorship applications. IRCC should also consider extending the open work permit program to sponsored spouses under Family Class applications (overseas sponsored spouses). Minimally, IRCC should issue approvals in principle within two months of submission of in-Canada spousal sponsorship applications to render applicants eligible to apply for open work permits, while also implementing expedited processing of such work permits once filed.

Uncertainty about Temporary Status after an Application Is Returned

Open work permit applications may be returned for not remitting the appropriate fee. The rejection letter from IRCC will advise that they need to resubmit with the fees. Although many applicants do this immediately, they may fall out of status in the interim, then requiring a restoration application. These steps are barriers to timely receipt of an open work permit.

Recommendation: Where a fee is paid incorrectly, contact and allow the applicant to correct the payment within a set timeframe and without consequence. Also make the open work permit fee clear on the IRCC website to prevent these situations. Where an application is returned, the accompanying letter should indicate the appropriate fees, including restoration fees if necessary.

Alternatively, IRCC could consider waiving open work permit fees and restoration fees for spousal sponsorship applicants.

MINOR DEFECTS IN APPLICATIONS

Immigration applications should be complete at the time of submission. However innocent mistakes and oversights happen, and officers should exercise discretion to avoid rejection or return of applications for minor defects.

Consider the example of an accompanying dependant. If the sponsorship application is returned over a minor defect, and the dependent turns 22 in the delay period, that dependant can no longer be included as an accompanying dependant. Such circumstances may cause lifelong hardship for Canadian families and their overseas relatives.

It is a positive development that the sponsorship checklists now specify types of evidence to be included with an application. However, since the new checklists were implemented, reviewing officers (often junior IRCC clerical staff doing first-stage completeness checks) routinely send back otherwise worthy sponsorship applications for minor omissions. It takes on average two to three months for IRCC to return “incomplete” applications, further compounding the delay.

An application deemed incomplete does not require further processing, and so will reduce processing time on paper. However, that application will likely be resubmitted, increasing, not decreasing, the overall workload for IRCC and the hardship to these Canadian families.

Recommendation: An application should be kept active for a set period after receipt unless it contains substantial defects. Minor defects should generally be addressed by sending requests for additional items while maintaining the active status of the application. Completeness checks should be performed within two weeks of filing so that families can address concerns in a timely manner.

AGE LIMIT ON SPONSORSHIP OF DEPENDENT CHILDREN AND STEPCHILDREN

While extending the age of dependency for children from 18 to 21 was a step in the right direction, a dependant child's 22nd birthday can be a hard deadline for a sponsorship applicant. Under the current law, it is possible to sponsor a 95-year-old parent, but impossible to sponsor a 22-year-old child (except under the so-called *lonely Canadian exception*, which is of limited applicability).

The successful settlement of permanent residents is hindered by concern for family members who are left behind. Also, hard deadlines for including overseas children as accompanying dependants can lead to rushed sponsorship applications and create pressure for couples to enter into marriages or common-law relationships sooner than they otherwise would. Further, given the increase in the proportion of elderly people in Canada, having adult children who can potentially care for their parents in old age is a benefit to those families and to Canadian society as a whole.

If IRCC is not inclined to extend the age of dependency beyond 21, it might instruct officers to give favourable consideration to adult children of Canadian citizens and permanent residents applying under humanitarian and compassionate grounds. The CBA Section would be pleased to provide further illustration and input on factors to be considered.

Recommendation: IRCC should instruct officers to give favourable consideration to adult children (over 21) of Canadian citizens and permanent residents applying under humanitarian and compassionate grounds.

PROBLEMS WITH SUBMISSION OF DOCUMENTS

Expired Forms

While we understand that IRCC intends to move to online applications for family sponsorship, in the meantime we are limited to a paper form submission process for sponsorship applications. Immigration forms are frequently updated, with the old forms expiring (for example, the IMM 0008, Generic Application Form and the IMM 5710, In-Canada Work Permit Application Form). What has changed is often not obvious to ordinary users of the forms. Those users will not know that the old forms have expired unless they check the IRCC website for the most current version. Sometimes, the IRCC website notes the previous dates of forms, meaning applicants would not know forms have changed unless they open, download and compare the forms.

Spousal and common-law partner sponsorship applicants often prepare the forms months in advance of submitting their applications. If a form has expired unbeknownst to the applicant, the application may end up being returned. This is a waste of time, not only for the applicant but for the IRCC officers processing the applications.

Recommendation: The expiry date, rather than the issue date, should be listed on immigration forms. Additionally, expired forms could be accepted for a period of time (six months or a year) after new forms are published on the website. IRCC should also consider posting notices on the website in advance of changes to the forms, including the date the changes will take effect.

Submissions on IRCC Web Form Not Acknowledged

Application items submitted via the IRCC web form are often not acknowledged. In some cases, IRCC will issue multiple requests for information already provided through the web form. This problem must be corrected if IRCC wishes to rely on the web form as its primary medium for receiving materials from applicants.

Recommendation: Efforts should be taken to ensure that the web form is functioning properly and that IRCC employees who direct correspondence sent through the web form are properly trained.

Confusion Regarding Linking Applications

Without clear instructions, linking a sponsorship or family class application to an account can be challenging, causing delays in submitting information in the allotted time. Currently an email is sent advising that the account can now be linked, but with no explanation on how to do it or what information is required.

Often immigration counsel spend countless hours attempting in vain to link applications for clients. This wastes the time of counsel and the money of applicants. Even when an applicant or representative uses the correct procedure, and despite assurances that the issue has been fixed, applicants are often unable to link their applications, suggesting that IRCC continues to experience technical difficulties with this function.

If unable to link an application to an account, additional information must be submitted via Case Specific Inquiry, which can cause significant delay in receipt and lead to IRCC sending second requests for information or even making negative decisions because the information was not received in time.

Recommendation: Emails advising that accounts can be linked should include clear and detailed instructions on the steps for doing so and what information is required. If technical difficulties continue, IRCC should consider cancelling the option to link applications until they are resolved.

SUMMARY OF RECOMMENDATIONS

1. All sponsored spouses, whether in status or out of status, should be eligible to receive open work permits within six to eight weeks of submission of in-Canada spousal sponsorship applications. IRCC should also consider extending the open work permit program to sponsored spouses under Family Class applications (overseas sponsored spouses). Minimally, IRCC should issue approvals in principle within two months of submission of in-Canada spousal sponsorship applications to render applicants eligible to apply for open work permits, while also implementing expedited processing of such work permits once filed.
2. Where a fee is paid incorrectly, contact and allow the applicant to correct the payment within a set timeframe and without consequence. Also, make the open work permit fee clear on the IRCC website to prevent these situations. Where an application is returned, the accompanying letter should indicate the appropriate fees, including restoration fees if necessary.
3. An application should be kept active for a set period after receipt unless it contains substantial defects. Minor defects should generally be addressed by sending requests for

additional items while maintaining the active status of the application. Completeness checks should be performed within two weeks of filing so that families can address concerns in a timely manner.

4. IRCC should instruct officers to give favourable consideration to adult children (over 21) of Canadian citizens and permanent residents applying under humanitarian and compassionate grounds.
5. The expiry date, rather than the issue date, should be listed on immigration forms. Additionally, expired forms could be accepted for a period of time (six months or a year) after new forms are published on the website. IRCC should also consider posting notices on the website in advance of changes to forms, including the dates those changes will take effect.
6. Efforts should be taken to ensure that the web form is functioning properly and that IRCC employees who direct correspondence sent through the web form are properly trained.
7. Emails advising that accounts can be linked should include clear and detailed instructions on the steps for doing so and what information is required. If technical difficulties continue, IRCC should consider cancelling the option to link applications until they are.

The CBA Section appreciates the opportunity to comment on the current state of the spousal sponsorship process. We share with the IRCC the goal of a transparent, fair, and efficient process. Please let us know if you have any questions regarding our recommendations.

Yours truly,

(original letter signed by Sarah MacKenzie for Marina Sedai)

Marina Sedai
Chair, CBA Immigration Law Section