



July 23, 2021

Via email: Minister@cic.gc.ca

The Honourable Marco Mendicino, P.C. M.P.
Minister of Immigration, Refugees and Citizenship
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Minister Mendicino:

Re: Addressing Challenges in Immigration Application Processing Due to COVID-19

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to recommend measures to alleviate the challenges in processing immigration applications that have emerged due to the COVID-19 pandemic.

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 Section has approximately 1,200 members across Canada practising in all areas of immigration and refugee law.

The pandemic has caused major disruptions in processing immigration applications. Immigration and visa officers are working from home and in-person meetings with visa applicants are still being cancelled, leading to a significant backlog of cases. Paper applications needed to be scanned and copied into IRCC's computer system. The antiquated Global Case Management System (GCMS) was not built for these circumstances. This has hamstrung IRCC from efficiently processing applications.

The CBA Section is pleased that IRCC plans to invest in modernizing the outdated GCMS. The pandemic has highlighted the inadequacies of a paper-based application system and accelerated the adoption of innovative technologies such as artificial intelligence. We have identified areas where processing applications can be improved to help address the backlog.

1) Landing applicants with expired/expiring COPRs

The CBA Section recommends streamlining program delivery updates to facilitate the landing in Canada of holders of expired or expiring confirmations of permanent residence (COPR). This objective is frustrated as the government is trying to meet annual targets when Orders-in-Council and other legal instruments are in place to manage the risks associated with the pandemic.

We suggest that IRCC re-establish a systematic method to confirm Permanent Residency. Previously, permanent resident applicants in possession of an expired COPR and permanent resident visas who were ready to travel to Canada were invited to contact IRCC via a web form or the visa office email. As of January 5, 2021, the program delivery instructions state that applicants should not contact IRCC but rather “IRCC will be contacting these applicants once they are approved to come to Canada”. It is unclear how IRCC is triaging applications and how long that will take. This will lead to more people contacting IRCC, which will increase wait times.

We also recommend clarifications to the email that applicants receive outlining instructions to PRs whose visa counterfoil has expired. The current email references new travel arrangements for landing in Canada. Some applicants are not permitted to board a plane in their country of origin by local immigration officers because of an expired visa stamp in their passport. This is a serious issue. One solution would be to state in the email that local authorities could contact a Government of Canada office to verify that the traveller has approval to travel to Canada. This would help address confusion especially among local authorities, who are seeking to prevent fraud at airports.

Another confusing aspect of the email applicants receive is its emphasis on applicants ensuring that their planned travel be limited to two airport stopovers en route to Canada. The CBA Section questions the need for this statement. Applicants should be able to make the travel arrangements they need to accommodate cost and family considerations.

IRCC’s standardized email also references the requirement for the applicant to intend to reside in Canada permanently. We doubt that IRCC can effectively assess the PR applicant’s intent to reside permanently at this time, due to the uncertainties associated with the pandemic. We believe that applicants should have some leeway as they may need to leave Canada to assist family members in coping with the pandemic. The residency requirement is activated by the applicant physically landing in Canada. There is no regulatory requirement mandating that the individual stay permanently in Canada.

There needs to be greater clarity about how IRCC will handle circumstances where there is a last-minute change to the applicant’s flight itinerary before the individual travels to Canada to validate the COPR. How will IRCC triage these cases?

We recommend automatically extending the validity of a medical exam for all approved cases. Applicants should not be penalized for the effects of the COVID-19 pandemic. An extension of the medical exam validity of six or twelve months is needed given how long it takes to facilitate travel for those who possess expired COPRs and given the uncertainties of international travel.

2) Processing of Spousal Applications

The pandemic has resulted in lengthy processing delays for overseas spousal cases. Applications that would normally be followed by acknowledgement of receipt (AOR) letters in one or two months now take nine months or longer to receive the initial AOR. Processing delays for most Spousal Common Law Sponsorships are well beyond a twelve-month processing standard. The delay in processing overseas applications causes setbacks for other aspects of the application process. It often means that applicants need to obtain new record checks or medicals, which can be challenging during the pandemic.

IRCC should consider issuing a temporary resident visa to applicants from outside of Canada if the principal applicant passes criminality and security reviews. A temporary resident visa would allow applicants entry into Canada for a limited period so they could be with their spouse while they wait for their application to be processed. This would further the principle of family reunification outlined in section 3 of the IRPA.

Our members continue to report applications being returned after significant delays for trivial or erroneous reasons. We outlined our concerns and recommendations for addressing them in a letter to IRCC in December 2020.¹

We recommend that IRCC consider developing a new pilot program to allow sponsored spouses to attend post-secondary education, which could run similarly to the open work permit process. Spouses would still need to apply for and be accepted into university or college but instead of applying for a study permit separately, they could choose whether to apply for a study permit, an open work permit, or both if they wanted to work part-time and attend post-secondary education. This would address the barrier some students face of showing they have the necessary funds to attend post-secondary schooling.

Flexibility should be afforded to in-land applications submitted on a humanitarian and compassionate basis. Applicants should be able to apply for a work permit through these applications and the processing timeline should fall in the twelve-month inland spousal sponsorship processing standard. Sometimes applicants face removal from Canada and risk being separated from their family. If they are removed from Canada, the process of bringing them back through an Authorization to Return to Canada can be complicated. The associated processing delays lead to removal proceedings and our Federal Court system becomes inundated with judicial review applications. This can lead to unnecessary and costly litigation.

3) Pathways to Permanent Residence

We welcome IRCC's recent creation of new pathways to permanent residence for essential temporary workers and international graduates and its decision to lower the overall threshold score for Express Entry of skilled immigrants in Canada to recognize the contributions of frontline workers and those contributing to the Canadian economy. We have suggestions for creating additional pathways to permanent residency.

Changes to Express Entry

We recommend that IRCC explore other ways to increase Express Entry draws. For example, it could increase the points for a Canadian education or close family members (e.g. parents, grandparents, siblings, aunts and uncles) in Canada.

IRCC should make it possible for applicants to earn points for age up to 55 years of age. It is common for people of that age to participate in Canada's labour force. Applicants who are 45 to 55 years of age are productive and able to contribute to the economy. We should not stop giving points for age at 45 years old.

We propose modifying the criteria for the Express Entry program to allow work experience based on self-employment. This is particularly true for those on work permits who fit in the categories of physician, NAFTA/CUSMA/CETA investor, and significant benefit C10/C11. IRCC could also consider expanding the list of qualified applicants to those on open spousal work permits or open post-graduate work permits.

We recommend expanding the work experience that counts under the Canadian Experience Class (CEC) to include NOC C workers who also have valuable Canadian work experience, which shows their integration in the Canadian economy.

¹ Letter from CBA Immigration Law Section to ADM. Operations, IRCC, [COVID-19 and Delayed Returns of Application Packages by IRCC Processing Offices](#), 21 December 2020.

We recommend making it possible for international students who graduate from high skilled programs such as engineering to use Express Entry without needing to meet the minimum one year of work experience. These students typically have completed a three or four-year university degree program and obtained a high skilled job offer. They are frequently streamlined through the relevant Provincial Nominee Program (PNP). We recommend that they also benefit from streamlined federal processing through the Express Entry. Currently, the only way an applicant can use CEC and Express Entry processing is if they have at least one year of work experience in the last five years.

We also recommend that IRCC create a Federal Skilled Trades-specific draw targeting applicants who are in Canada or who have worked here for at least one year. IRCC should expand the list of occupations to include those where there are nation-wide job shortages.

Changes to Other Immigration Programs

IRCC should consider increasing the number of skilled workers accepted through PNPs across Canada. For instance, the Ontario Foreign Worker Stream used to be a solid pathway for those in Canada on work permits with good jobs (and employers keen to keep them) who do not have the required points for Express Entry due to age, language or education.

Alternatively, IRCC could create a federal program mirroring the Ontario Foreign Worker Stream. This would avoid duplication of work as both provincial and federal officers review and approve these applications.

We also recommend that IRCC create a Canadian Business Experience Class. We proposed criteria for this program in a 2015 letter,² which included owning at least a third of a business, managing the business for at least two out of three years before applying, and employing at least three workers for at least two years.

IRCC could also increase arranged employment points from 50 to 200 for all International Mobility Program work permit holders. These are highly skilled people with jobs in Canada. Sometimes they cannot work in Canada for a year as they are travelling back and forth.

IRCC should also prioritize the cases of Start-up Visa applicants who are physically in Canada by creating a designated contact email for these applicants.

We recommend that IRCC revitalize the caregiver programs by facilitating permanent residence applications for all caregivers with 12 months of Canadian work experience (whether in home support or childcare) and move paper-based applications online to expedite processing.

For recent graduates, we recommend increasing post-graduate open work permit duration to 18 months for those who have studied diploma programs between eight and 18 months. Allowing graduates 18 months for their open work permit will give them time to apply for PR (usually after 12 months of work experience in Canada) and to apply for a work permit while their PR is pending.

Greater Flexibility in Implementation of Existing Programs

We recommend that IRCC exercise more flexibility in issuing temporary resident permits so that those who made minor mistakes or were advised by unscrupulous immigration consultants can regularize their status, get a job and have a pathway to permanent residence if they meet the CEC or PNP requirements.

² Letter from CBA Immigration Law Section to Acting Director Economic Immigration Policy and Programs Division, IRCC, [Canadian Business Experience Class](#), 1 December 2015.

IRCC should be flexible with humanitarian applicants who are committed to being here long term but do not meet the formal requirements such as not declaring a spouse because of poor advice.

We recommend that IRCC consider failed refugee claimants under economic programs such as Express Entry and PNPs. Many failed refugee claimants have legitimate fears of returning to their country even if they do not meet the definition of a Convention refugee. These applicants should be allowed to apply under any existing economic class permanent resident streams. PNP offices across Canada have a policy not to consider a failed refugee unless they leave Canada before submitting their application. If an applicant demonstrates a consistent work record, IRCC should allow them to submit their PR application without having to first leave Canada and file an Authorization to Return to Canada, which is difficult and costly to complete. This would reduce the IRB's backlog and regularize the status of those who in some cases may be working in frontline positions.

We also recommend removing the bar that prohibits humanitarian applications from being filed when there is a refugee claim and increasing the target for humanitarian applications. Having a low target puts pressure on officers to refuse applications unreasonably. This leads to subsequent applications which must be processed, more removal proceedings (including associated deferral requests), and more applications to the Federal Court for judicial review.

4) Modernization of Application Processing

IRCC needs to adopt a new paradigm for delivering immigration services in both permanent resident and temporary resident streams. It must transition to electronic filing for all applications while fully integrating authorized representatives in these new tools.³ The technology exists, and it is time to embrace it. Some technologies have already been introduced. For example, the federal government has been using artificial intelligence since 2014 and has introduced biometrics to assist with efficient identification systems. Other technologies such as blockchain also have the potential to improve IRCC's processes.

As we emphasized in a past submission,⁴ there are dangers associated with these technologies, and meaningful oversight and transparency must be built in. These technologies should be applied in a manner that does not fetter the discretion of the decision-maker. We also recommend that IRCC implement quality control mechanisms to review decisions that are made.

Security and privacy protections should be implemented by IRCC to maintain a robust cybersecurity management system to prevent unauthorized access from unknown individuals.

Notwithstanding the real risks, these technologies could reduce the many months to years now required to process applications, enable the government to meet its targets, and improve confidence in the processing system overall.

Applicants could also be updated on the status of ongoing cases through the IRCC portal. We recommend that the portal be divided into categories. The first category would be for temporary resident documents and would include all visitor, study and work permits. The second category would be for permanent residence. The goal of this change is a messaging system more responsive to the needs of portal owners with many files to administer. The result would be a simpler system for distilling messages on files so the portal owner need not search a particular UCI or FILE number to learn what is new with an already filed application.

³ For more information about our concerns about the exclusion of counsel from IRCC programs please see Letter from CBA Immigration Law Section to ADM. Operations, IRCC, [Exclusion of Counsel](#), 7 May 2021.

⁴ Letter from CBA Immigration Law Section to Minister of Immigration, Refugees and Citizenship, [Artificial Intelligence and Machine Learning in Immigration Law](#), 11 July 2019.

IRCC should eliminate the counterfoil document for visas as well as the work, study or visitor document normally issued to an individual at point of entry. These can be replaced with a barcode like those on grocery packaging. The use of artificial intelligence can create a standard where the code will indicate to a government official the type of document a person has been issued.

IRCC's website should be upgraded to make new policies and bulletins for all immigration procedures easier to find. A more accessible website would benefit both government and the public as applicants will better understand program requirements.

If an interview is needed, then IRCC should make every effort to have as an option virtual interviews via MS Teams, Zoom or other platform so applicants need not travel long distances. Legal counsel should be allowed to virtually attend the interview which will help reduce unnecessary litigation in Federal Court. We understand that IRCC is already starting to implement virtual interviews and applaud this initiative.

The CBA Section appreciates the opportunity to suggest how IRCC can tackle the challenges arising from COVID-19 and address the backlog of immigration cases.

Yours truly,

(original letter signed by Nadia Sayed for Mark Holthe)

Mark Holthe
Chair, Immigration Law Section