



THE CANADIAN
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September 23, 2022

Via email: iepu-upeli@cbsa-asfc.gc.ca

Catherine Dubuc
Immigration and External Review Policy Directorate
Canada Border Services Agency
100 Metcalfe St., 10th floor
Ottawa ON K1A 0L8

Dear Catherine Dubuc,

Re: Proposed Amendments to the stay of removal/public policy considerations

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to comment on the proposed amendment to section 233 of the Immigration and Refugee Protection Regulations (IRPR) concerning stays of removal pursuant to public policies.

The CBA is a national association of 37,000 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.

CBSA is considering potential changes to section 233 of the IRPR to allow the Minister of Public Safety to provide a stay of removal to a group of applicants in relation to a specific public policy.¹ The CBA Section supports the key scenario in which a foreign national could receive a group-based stay of removal before their application receives an approval in principle, reducing the chance of being removed before Immigration, Refugees and Citizenship Canada (IRCC) grants an approval in principle. When the Minister of Public Safety does not grant a group-based stay of removal for a specific public policy, a stay of removal would continue to apply if IRCC provides an approval in principle.

The group that would benefit from this change in policy or legislation is the group of applicants applying under the Spouse or Common-Law Partner in Canada class in the context of the inland spousal sponsorship application.

¹ CBSA, [Proposed Amendments to Stay of Removal/Public Policy Considerations – Consultation](#).

Thousands of persons file inland spousal sponsorship applications each year. Currently, according to IRCC, these applications take 15 months to process until an eligibility decision is made.²

These applications are filed pursuant to Regulation 124 which provides:

124 A foreign national is a member of the spouse or common-law partner in Canada class if they

- a. are the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada;
- b. have temporary resident status in Canada; and
- c. are the subject of a sponsorship application.

Pursuant to R124, applicants must reside in Canada and cohabit with their sponsor. If applicants are removed while their application is being processed, they cease to meet the R124 criteria, the application is cancelled, and applicants must refile overseas, pursuant to R117, under the family class category.

Every year, hundreds of applicants under the Spouse or Common-Law Partner in Canada class are removed during the processing of their applications. Since 2008, public policy has been in place so that applicants can benefit from a two-month (60 day) deferral of removal provided that their application was submitted prior to being “removal ready.”³ The policy also exempts applicants from the requirement to have temporary resident status. However, this policy was implemented when inland spousal applications were likely decided faster than they are today, such that a two-month deferral would allow sufficient time to decide the application at stage 1.

Today, with 15 months of processing time until stage 1, this policy has outlived its purpose. A two-month deferral is rarely sufficient to allow for a stage 1 decision. This results in the removal of hundreds of applicants each year, which causes families to be separated for years. Once removed, applications become moot and must be re-submitted from overseas. This results in thousands of dollars in legal and processing fees for applicants, as well as the stress and hardship of being separated from their spouse, and sometimes children, who remain in Canada. When children are also removed, their school year is disrupted, sometimes setting them back in their studies.

These cases create great stress on several resources. Without an automatic stay of removal, applicants must file a deferral request with CBSA. Where a request is refused, the applicant must file a stay motion in Federal Court to avoid forcible deportation. These motions are often filed last minute, creating huge strain on the Court. From an access to justice perspective, this process uses up precious resources for at least three parties and creates huge stress for families. All applicants who are removed must apply for an authorization to return to Canada (ARC) prior to returning. Depending on their immigration history in Canada and the visa office in charge, these ARCs can be refused, even if the sponsorship application is approved. The additional applications (Outside Canada Sponsorship and ARC applications) create greater processing backlogs for IRCC, occupying valuable IRCC resources.

For these reasons, the CBA Section supports changes to CBSA’s policy or legislation to allow an automatic stay of removal for applicants in the Spouse or Common-Law Partner in Canada class who have filed an inland application.

² IRCC, [Check processing times](#).

³ IRCC, [Public Policy Under A25\(1\) of IRPA to Facilitate Processing in accordance with the Regulations of the Spouse or Common-law Partner in Canada Class](#).

In summary, the CBA Section agrees with and supports the change in policy proposed by the Minister of Public Safety which will allow applicants under the Inland Spousal Sponsorship Stream to receive an automatic stay of removal upon proof and confirmation that the applicant has filed their Permanent Residency application in said category.

The CBA Section appreciates the opportunity to comment on proposed amendments to Stay of Removal and would welcome the opportunity to make further submissions on other groups that are impacted by the lack of stays, such as H&C applicants.

We would be pleased to discuss our recommendations, offer additional insights, and assist with the development and implementation of relevant policies and regulatory amendments.

Yours truly,

(original letter signed by Véronique Morissette for Lisa Middlemiss)

Lisa Middlemiss
Chair, CBA Immigration Law Section

cc.: Maciej Puzio, Senior Advisor (Maciej.Puzio@cbsa-asfc.gc.ca)