

### LCP Reforms: Minister's Compassion vis-à-vis a Flawed Program

Many rejoiced when Citizenship and Immigration Minister Jason Kenney announced substantial changes to the Live-in Caregiver Program (LCP) on 12 December 2009 at the Kababayan Community Centre in Toronto. Although the changes did not fully encompass the reforms that caregivers and their advocates would have wanted (i.e. permanent resident status upon arrival in Canada), they were generally seen as a good start for at least having recognized the many shortcomings of the program.

These proposed changes were published in the Canada Gazette on 19 December 2009 for a 30-day period and final regulatory changes are supposed to be published afterwards. Aside from the Regulatory Impact Analysis Statement (RIAS) published on the CIC website with details of the proposed changes, there is still no clear indication whether these changes have actually entered into force and are being implemented in individual cases.

It must be noted that the RIAS sets out the implementing guidelines on the three main proposed changes as follows:

1. The proposal to increase the time within which caregivers may complete the two-year live-in caregiving work to four years instead of three years would apply “upon implementation, to all live-in caregivers, including those already in Canada, for whom a determination on permanent residence had not yet been made.”
2. The proposal to allow an hours-based computation of two years (equivalent to 3,900 hours) must be completed within a minimum of 22 months. Therefore, even in this hours-based computation, caregivers can only expedite their permanent residence application by two months at the most. Moreover, only a maximum of 10% of overtime hours can be counted towards this requirement to discourage caregivers or employers from allowing excessive overtime work. As in the first proposal, this will apply to all live-in caregivers, including those already here, for whom a determination on permanent residence had not yet been made.
3. The proposed elimination of the second medical examination however, will not be applied to live-in caregivers who are already here on a work permit and in the process of applying for permanent resident status. This means that those who are already in the LCP would still have to go through a second medical examination as part of their permanent residence applications. The proposed change will only apply to those who are still in the process of applying for their initial LCP work permits whose medical examination will now be assessed with a “long-term view” since they will not anymore be required to undergo another medical examination when applying for permanent resident status.

We are still hoping that the feedback received after the publication of the proposed changes in the Canada Gazette could result in even more favorable changes for LCP participants. Meanwhile, we are happy to note that the CIC Minister's office has continued to lend a compassionate ear to individual caregiver cases brought to his attention, especially those involving failure to satisfy certain LCP requirements due to unfortunate circumstances. For instance, the Minister's office has again kindly exercised positive discretion in the case of a caregiver who recently died of cancer by granting her family members permanent resident

status on humanitarian and compassionate grounds. The Minister's office has likewise agreed to grant temporary resident permits or issue LCP work permits to a number of deserving caregivers who have either lost status or failed to comply with LCP requirements for reasons beyond their control.

The Minister's kind exercise of his discretionary power in exceptional cases is greatly appreciated as it is often the utmost last resort for caregivers who have been faced with difficult situations resulting in their inability to meet the requirements of the program. Although the remedy of seeking leave for judicial review with the Federal Court is available to challenge unjust administrative refusals, this is not the most practical option for caregivers who have very limited means to afford such a time-consuming and costly legal process. Unlike failed refugee claimants, live-in caregivers are not even qualified to seek legal aid for pursuing a Federal Court judicial review, or for other immigration legal services.

Through his exercise of discretionary power, the CIC Minister has proven time and again that he is fully aware of the disadvantages that caregivers face and that he is willing to treat those deserving cases with humanity and compassion.

While the Minister's positive exercise of discretion is a boon to caregivers and their families who have benefited from this type of generosity, it must be noted that these positive decisions cannot create legal precedents as they are strictly based on the particular circumstances of each case.

Aside from the need to clarify the implementing details of recent reforms to the LCP therefore, it would be even more greatly appreciated if the Minister heeds the call for further meaningful changes to the LCP, namely, the removal of the mandatory live-in requirement and issuance of occupation-specific instead of employer-specific work permits. Better yet, live-in caregivers should be granted permanent resident status upon arrival in Canada. Though seemingly drastic, these major reforms could be the only way to end the many injustices perpetrated within the context of an intrinsically flawed, albeit popular immigration program such as the LCP.

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