

## **Beware of Ghost Immigration Consultants**

When I started practicing Canadian immigration law ten years ago, the unscrupulous practices of so-called immigration consultants was widely reported and discussed in the media. Among others, there was a series of investigative new articles published in the Toronto Star which reported how certain immigration consultants advised prospective immigrants to concoct stories in support of refugee claims or to commit marriage fraud as a quick way to obtain permanent residence in Canada. These exposés led to calls from various sectors to clamp down and regulate the business of immigration consultancy.

A few years later, the government introduced a law called "Cracking Down on Crooked Consultants Act" which was meant to impose strict regulations on those who are paid to provide immigration advice to prospective applicants and the general public. It also led to the creation of the Immigration Consultants of Canada Regulatory Council (ICCRC) which replaced the former Canadian Society of Immigration Consultants (CSIC) as the body which regulates registered immigration consultants in Canada.

Aside from ICCRC registered immigration consultants, the Canadian government only authorizes lawyers who are in good standing with one of the provincial law societies of Canada, to represent immigration applicants for a fee. Hence, the applications of those who hire and pay fees to a representative who is not a lawyer or registered immigration consultant, can either be returned or worse, refused.

Refusals often result if the applicants are found to have committed misrepresentation in their visa or immigration applications, whether committed by them or by another (indirect misrepresentation). If the misrepresentation was committed by someone else even without the applicant's full knowledge or consent, the applicant would still be held responsible and suffer the consequences.

Many of those charged with indirect misrepresentation have hired "ghost consultants" or those who are hidden and unreported in the immigration applications as the applicant's paid representative. What many of these ghost consultants have done is to complete all the required forms and documents on behalf of the applicants without completing the mandatory Use of a Representative form to disclose the representation or assistance provided. If they have included a Use of a Representative form, they may have ticked of the box which states that they are unpaid representatives even if they were in fact paid for their services.

An important reason for limiting authorized paid representatives to registered immigration consultants or lawyers in good standing is to ensure that there are proper avenues for the public to file complaints against representatives who fail to serve their clients based on the highest professional and ethical standards.

But as had been raised time and again, the provincial law societies or the ICCRC can only monitor and police their own members and not the unregistered ghost consultants, many of whom even conduct business from other countries.

One way to ensure that these unauthorized consultants can be prosecuted is to report them to the Canadian Border Services Agency's fraud tip line (1-888-502-9060), to the RCMP or local police for further investigation and possible filing of fraud or related charges.

Another obvious way is for applicants to deal only with authorized representatives who are willing to disclose their existence/role in visa or immigration applications.

Last month, a news article in the Toronto Star reported what is believed to be "the biggest crackdown on unlicensed ghost consultants" where dozens of applications which were filed from the same company address in China were refused either due to misrepresentation or for using unauthorized representatives.

This recent crackdown is still subject to judicial review and raises the issue of whether those who may assist in completing the forms but do not deal with immigration officials should also be disclosed and submit Use of a Representative forms. More importantly, it raises the issue of whether the applicants themselves should be penalized through the outright refusal of their applications when there is no bad faith of their part (e.g. they sought help in filling up or translating the forms or were misled into believing that the ghost consultants were authorized representatives). Why should the applicants be punished while the unscrupulous consultants get off scot-free and are able to conduct business as usual to the prejudice of future applicants?

There are those who would argue that it is a "buyer beware" situation in that the applicants are responsible for the outcome of their choice of advisor or representative. To an extent, I would agree. However, there also has to be a way to ensure a fair and balanced treatment of both parties based on the specific circumstances of each case. While it may be much easier to simply refuse all applicants who hired unauthorized representatives or committed direct or indirect misrepresentation, there should be a mechanism by which people who acted in good faith and who are otherwise eligible for the visa or immigration category they applied for, should be given another chance.

Any law meant to "crack down on crooked consultants" should aim to do just that, not by blaming and punishing the victims, but by ensuring that the "crooked consultants" are prosecuted for their misdeeds (and prevent further occurrence), be they in Canada or overseas.

For prospective applicants, it may also help to be reminded that no representative, whether authorized or not, can guarantee success in any immigration or visa application. If anyone guarantees success or is not willing to disclose their existence or paid services relating to your application, then be very wary. The negative consequences of working with ghost immigration consultants may haunt you in more ways, or for much longer, than you can imagine.

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