

### ***Caregiver Program Clarifications and Clawbacks?***

Since the new Caregiver Program was announced on 31 October 2014 and the Ministerial Instructions released shortly before the implementation date of 30 November 2014, many questions, varying interpretations and even misinformation have been going around and creating fear and confusion within the caregiver community. Although based on the scant information and guidelines available on the CIC website and the Ministerial Instructions published in the Canada Gazette, I hope that the following will help clarify some of the issues.

#### *LCP participants will be processed under the old LCP rules*

One of the most frequently-asked questions after the new Caregiver Program was announced is whether those who are already in Canada and working under live-in caregiver work permits but who have not yet completed the two-year requirement can still apply for permanent residence under the old Live-in Caregiver Program (LCP). The short answer is yes.

However, when the Ministerial Instructions were published in the Canada Gazette, worries were triggered by a provision stating that "*no new permanent resident application under the Live-in Caregiver Class will be accepted for processing*". What many people failed to note is the second clause of this provision: "*unless it is supported, at the time of application receipt by CIC, by evidence that the underlying work permit associated with the foreign national's initial entry as a live-in caregiver under the Live-in Caregiver Program (LCP) was based on a Labour Market Impact Assessment (LMIA) that was requested from Service Canada on or before November 30, 2014.*"

Since the work permits of existing LCP participants upon their initial entry to Canada were based on LMOs/LMIAs that were requested before the effectivity date of the new Caregiver Program, these caregivers continue to qualify for permanent residence under section 113 of the *Immigration and Refugee Protection Regulations*.

Thus, a live-in caregiver who initially came to Canada under an LCP work permit but who wants to change employers for whatever reason, is free to do so, provided that the new employer obtains an LMIA under the new rules. This is probably where part of the confusion lies - since the LMIA requirements have changed, it may become more difficult for a prospective employer to obtain a positive LMIA for a live-in caregiver. If the caregiver succeeds in obtaining a new LMIA-based work permit after 30 November 2014, he/she should still qualify to apply for permanent residence under the old LCP rules.

#### *Ban on Humanitarian and Compassionate Requests*

The following provision in the Ministerial Instructions somehow became another source of fear and confusion: "*Requests made on the basis of humanitarian and compassionate grounds from outside Canada that accompany any permanent resident application affected by Ministerial Instructions but not identified for processing under the Instructions will not be processed.*"

Due to the various issues inevitably faced by caregivers, many are relying on H&C consideration to be granted an exemption from certain grounds that could lead to a refusal of their application. Hence the fear that if H&C requests will not anymore be allowed, many will lose their chance at obtaining permanent

residence. However, a plain reading of this provision is that CIC will not grant H&C requests in favor of dependents of caregiver applicants (under the new Caregiver Program) who are residing outside of Canada. It does not, on its face, bar H&C requests from caregiver applicants themselves and/or their dependents who are in Canada.

*Claw back of Previous "Improvements" to the LCP?*

It is also quite disturbing to note that with the recent changes, it appears that many of the previous LCP changes and improvements (which were largely achieved through sustained advocacy efforts) are being clawed back.

I would be happy to be proven wrong, but so far, some examples of these apparent clawbacks are:

1. The variations to the recruitment and advertising requirements - under the LCP, there is no need to show proof of recruitment and advertisement efforts if an employer is hiring a live-in caregiver who is already in Canada. There does not appear to be any similar waiver for LMIA applications under the newly-created classification of "in home caregivers" which are subject to the usual recruitment and advertising requirements for all temporary foreign workers.
2. The alternative option of proving two years of live-in caregiving work, i.e. 3900 hours within at least 22 months and can count up to 390 hours of overtime work. The new Caregiver Program or the corresponding CIC checklists do not anymore allow such an alternative option of meeting the two-year work requirement.
3. The quick issuance of open work permits even before the grant of approval in principle of LCP applications which was granted in recognition of the hardships that caregivers suffer as a result of application processing delays. Under the current Caregiver Program, there is only an expressed intent to expedite the processing of permanent residence applications (i.e. within six months) but there is no similar commitment to expedite the issuance of temporary work permits, whether LMIA-based or open work permits.
4. The removal of the second medical examination requirement when applying for permanent residence, or the *Juana Tejada Law*, named after the caregiver who was initially refused permanent residence on medical grounds after she was diagnosed with cancer. Under the current CIC document checklists for the new Caregiver classes, an "Upfront medical examination within the year prior to application" is required for the principal applicant and all dependents. If so, the return of the second medical examination requirement could again lead to unjust refusals due to medical inadmissibility of caregivers who enter Canada as temporary foreign workers after passing the initial medical examination, but who will be diagnosed with cancer or some other serious illness while working in Canada and before applying for permanent residence.

On top of the above, the most obvious "claw back" is of course the removal of the right to apply for permanent residence after completing the two years of full time caregiving work due to the annual quotas and the added education and language requirements.

Therefore, we must not only persist in bringing to the government's attention the many shortcomings of the recent changes, but we must also ensure that the positive changes to the old LCP will at the very least be preserved and not clawed back under the new caregiver program.

***Merry Christmas and a Blessed Holiday Season to all!***

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