

Family Separation in the Immigration Context

Although the issue had arisen in the past, sponsorship fraud was in the news again quite recently after a number of Canadians who sponsored their foreign spouses publicly decried the fact that the latter only married them for purposes of gaining immigration status in Canada. Unfortunately, the sponsored spouses have already been granted permanent residence and the sponsors cannot simply revoke the three-year undertaking to support that they submitted with the sponsorship application. As much as they would want these alleged fraudsters deported immediately, there are processes which need to be undertaken before this can be done.

At the other end of the spectrum are couples in genuine, committed and loving relationships who are suffering from long-term separation due to the immigration officer's often perceived overzealousness in disputing the genuineness of a marital relationship, usually by cross-examining the spouses during their visa interviews. There is hardly any consideration given to the fact that the "failure" in such interviews can often be attributed to language barriers, nervousness or even cultural differences or misunderstanding.

But how does one truly gauge the genuineness of a relationship and what evidence could be presented to prove that it is genuine and not entered into simply to obtain permanent residence in Canada? Unfortunately, this is not an exact science and there is no infallible way to do so. Until such a foolproof way is devised, it is rather unfair that the genuine spouses will bear the brunt of the growing suspicion against potential sponsorship fraud. To avoid being caught in this unfortunate trap, it is very important that spousal sponsorship applications are not only comprehensive and thorough, but also presented in such a way as to avoid any doubt or confusion on the part of the reviewing officer. CIC on the other hand, should provide further training to their officers that will inculcate better understanding of cultural differences and personality types that will avoid a one-size-fits-all standard for determining the genuineness of a relationship.

Aside from failed sponsorship applications, there is another type of family separation which had long been cruelly and pervasively affecting many prospective permanent residents. These often involve live-in caregivers who initially enter Canada on work permits and are not allowed to bring their families with them in the meantime. It is only after having satisfied the requirements of the program (two years of full time live-in caregiving work) would they be able to apply for permanent residence for themselves and their families, which could easily take an additional few more years to be processed.

It must be noted that in this permanent residence application, the caregiver is applying concurrently with her family members and not "sponsoring" them. As such, they are all required to pass the medical and security clearance requirements. Although recent changes to the LCP regulations removed the requirement of a second medical examination for the caregiver herself, the accompanying family members would still need

to undergo the medical and security checks at the permanent residence application stage. Even if the family members are declared to be “non-accompanying dependents” they are still required to undergo medical and security checks - and if one family member is found to be inadmissible in the process, this would render everyone, including the principal applicant caregiver, inadmissible to Canada.

There are all sorts of complicated situations that could arise from this requirement. First and most prevalent of all, a married caregiver who has been away from her family for many years while working as an overseas domestic worker, often ends up with a broken home – i.e. a philandering spouse and/or alienated children who refuse to finish school or become addicted to vices. When it is time to process the family’s permanent residence applications, these family members could either refuse to undergo the required medical examinations, provide the necessary police clearances or worse, fail them for all sorts of reasons. For caregivers who have become estranged from their husbands, they would also need to obtain a legal separation, annulment or divorce if they want them removed from their permanent residence applications altogether. As these are legal processes which could take time and financial resources, many caregivers find themselves trapped in a situation where their permanent residence applications are delayed or even denied, if they and their dependents are unable to meet these additional requirements within a reasonable time.

The conflict of law issues arising from the differences in Philippine and Canadian and family laws (e.g. lack of divorce and prohibition against collusion in annulment cases in the Philippines) could result in further complications not only in the caregivers’ permanent residence applications but also in the legal status of their marriage and family lives. While obtaining a divorce in Canada or entering into a separation agreement with spouses may be a quick solution for some in having their permanent residence applications finalized, it is also important to be fully aware of the implications of such remedies, which could haunt the spouses even long after the permanent residence application has been granted or denied.

So whether one is dealing with sponsorship fraud, an unfairly refused sponsorship application or the inadmissibility of a dependent in a caregiver’s permanent residence application, prolonged and indefinite family separation is almost always an unwanted result. This clearly contradicts one of the main objectives of Canadian’s immigration law which is that of “family reunification.”

These unfortunate situations are just a few indications that our immigration system is quite broken and needs a lot of repair (not least of which is the granting of permanent residence to caregivers upon arrival). Meanwhile, there are still matters which are well within one’s control that could help prevent such unpleasant outcomes. For one, choose your spouses prudently. Then choose your immigration legal advisers wisely. Hopefully, more happy endings will follow.

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