

RHYME & REASON

Sponsorship Myths and Facts

Family reunification is among the pillars of Canadian immigration. This is the principle upon which the provisions for sponsoring family members is based. As a result, CIC allows the sponsorship of spouses, common law partners, children, parents, grandparents and other relatives (in certain exceptional circumstances), as a means of obtaining permanent resident status in Canada.

Applications to sponsor spouses, common law or conjugal partners and dependent children are given top priority such that these could take only a few months to process as contrasted to the several years that it takes for other types of sponsorships and permanent resident applications to be finalized. (For instance, a family class application to sponsor parents from the Philippines is currently taking three to four years to process.) If the submission package is complete and is able to address all the concerns that may be raised by the visa officer vis-à-vis the genuineness of the relationship, then the interview will most likely be waived and the processing time is greatly reduced.

Due to the relatively faster processing time, a number of unscrupulous individuals decide to enter into marriages of convenience and apply for permanent resident status under the family class category. This is to seriously caution those who are thinking of, or are being advised, to take this route. It is a very risky proposition and something that is not worth taking. For one, the threat of blackmail is always present. So is the possibility of prosecution for fraud, and the declaration of inadmissibility either for criminality or for misrepresentation. This will eventually lead to removal from Canada.

It must be kept in mind that the burden of proving the *bona fides* of the relationship is on the applicant. If the visa officer is not satisfied based on the documents provided, the visa officer is not obliged to go out of his or her way to seek further evidence. At best, the interview is the final opportunity for the sponsor and the sponsored person to convince the visa officer that the relationship is genuine and not one simply entered into for purposes of obtaining permanent resident status.

If the parties truly believe that the relationship is genuine but the visa officer refused to grant the sponsored person a permanent resident visa, the sponsor has a right to file an appeal with the Immigration Appeal Division (IAD) of the Immigration and Refugee Board (IRB). On appeal, the parties are allowed to submit additional evidence that were not submitted to the visa officer. If the board member is convinced of the genuineness of the relationship, he or she has the power to reverse the visa officer's decision and consequently order the granting of a permanent resident visa to the sponsored person. Please note however, that due to the current shortage of IRB members who can preside at the IAD, there is a huge backlog of cases which is causing a long delay in the scheduling of appeal hearings. At present, it is taking about a year before an appeal hearing is even scheduled.

Aside from the documentary requirements and processing times, there are also other factors which need to be seriously considered when filing a family sponsorship application. Both the sponsor and the sponsored person/s do not only have to meet certain qualifications, they also have to execute a Sponsorship Agreement which lays down the responsibilities of both parties. For the most part, the sponsor undertakes the serious responsibility of taking care of all the basic needs of the sponsored person at least during the period specified. This means three years for spouses, common law or conjugal partners and dependent children over 22 years of age. For dependent children below 22 years old, the undertaking is for ten years or until reaching the age of 25 years old, whichever comes first. For parents, grandparents and all other relatives, the period of undertaking is ten years.

“Basic needs” refer to food, shelter, clothing, fuel, utilities, household supplies and even health care which are not provided by the government such as the costs of dental and eye care services.

While the sponsored person is also required to undertake reasonable efforts to meet basic needs, he or she can always depend on the sponsor for any and all forms of support. If the sponsor fails to provide such support and the sponsored person is forced to seek social welfare, the government will pass on the costs incurred to the sponsor during the period that the sponsorship undertaking is in effect.

Sponsorship is irrevocable, meaning the sponsor cannot force the government to nullify the sponsorship agreement and remove the sponsored person from Canada. Barring any ground for inadmissibility, the sponsored person’s status as a permanent resident is safe and is not within the sponsor’s power to take away.

This is important to note for those who are experiencing or have experienced relationship breakdowns. Some sponsored persons think that they are trapped and cannot get out of the relationship since their immigration status is tied to the sponsor. This is not true. The sponsored person is not a prisoner of the sponsor. If the relationship breaks down, the sponsored person has a right to seek external help. If seeking social welfare is necessary for survival, the government cannot deny such assistance. The sponsor will then become answerable to the government for all financial assistance received.

While it may not have been actively enforced in the past, the government has recently taken steps to seek repayment from sponsors for all social welfare assistance granted to their sponsored family members. Some sponsors have in fact been charged up to hundreds of thousands of dollars in accumulated social welfare payments.

Family reunification may be a pillar of Canadian immigration. However, it also means serious commitment and responsibility for all concerned.

The author would be interested to receive any feedback and may be reached at mdsantos@osgoode.yorku.ca