

Dealing with an Imperfect System

A few days ago, I have viewed euphoric scenes of the miners rescued in Chile after having been trapped underground for two months. It was fascinating to see how millions around the world watched with great anticipation the dramatic rescue of each miner who came out of a narrow tube, one person at a time, every half hour or so. The miners' determination to survive, the rescuers' heroic efforts and everybody else' refusal to give up hope all undoubtedly contributed to a triumphant outcome.

The nightmare endured by the miners during those two months reminded me of a recent observation made by an advocate who characterized caregivers with complex immigration problems as being “trapped in a system that can never be perfect.”

Indeed, the immigration system is far from being perfect. As such, it can be quite easy to fall into a seeming trap (or blackhole) for months and even years on end. However, this should not lead to complacency and/or helplessness. Instead, this reality should encourage us to come up with efficient and creative ways of dealing with such a system, imperfections and all.

In my immigration law practice, I have often encountered situations where clients were prejudiced by errors committed not by them, but by the frontline immigration officers or clerks handling their files. The errors could simply be typographical: e.g. that their personal or contact information were wrongly entered or that the notices were sent to the wrong address. Or they can consist of unexplained processing delays in the issuance of decisions or of visas and landing documents long after a positive decision has been rendered. Or they can be substantial: e.g. arbitrary decisions, or reasons for refusal which vary from one officer to another especially in applications which involve the exercise of an officer's discretion, that it often becomes difficult to predict application outcomes despite what the law, regulations or judicial precedents provide.

Typographical errors can often be dealt with most easily by correcting them at the earliest opportunity. Pointing out these errors to the appropriate office should be simple enough if the applicant realizes the mistake earlier on. A bigger problem could arise when the communication from CIC is never received because it was sent to a wrong address. One way to avoid this problem is to regularly check with the CIC call center or follow up directly with the office concerned if a decision is not received within the “normal” processing times that are published on the CIC website. By doing so, the applicant will eventually learn if a communication has been sent to him/her and to let CIC know if it was never received.

Procedural delays, on the other hand, are clearly part of a bigger problem within the government bureaucracy and is something that needs immediate reform. However, further delays can be reduced if not avoided when one submits as “complete” an application package as possible and makes full disclosure of all relevant information to avoid the need for CIC to require further submissions.

In the case of substantial errors (or procedural errors resulting to violations of natural justice), the remedies could include making a request for reconsideration, invoking a statutory right to an appeal or submitting a judicial review application with the Federal Court. These procedures have specific legal requisites and limitations and will not necessarily lead to desired outcomes. At the very least, they give one a second kick at the can from the perspective of another adjudicator, judge or decision maker.

It cannot be overemphasized that one needs a healthy dose of patience and perseverance when dealing with our immigration system. One should thus avoid contributing to the problem by failing to be thorough, honest and judicious in all submissions or representations made. At the same time, we need to remain vigilant and persistent in advocating for positive change until our messages are fully heard and acted upon.

Even though we might sometimes find ourselves seemingly trapped and totally discouraged, taking proactive steps to address the issues is the only way forward. When we always try our best to overcome struggles within an imperfect system, we will remain perfectly confident and hopeful that things can only get better.

This is true in immigration as in life, as the rescued Chilean miners have triumphantly shown.

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