

Primer on Spousal Sponsorship Applications

Despite having undergone frequent changes and tightening rules, spousal sponsorship applications are still among the most popular yet often misunderstood type of immigration applications in Canada. It may thus be helpful to review some basic guidelines involving this type of applications to increase chances of success or avoid needless refusals.

Eligible Relationships

There are three different types of partnerships that could qualify under the spousal sponsorship class, namely: spouses, common-law partners and conjugal partners.

Spouses are couples who are validly married in the jurisdiction where the marriage was celebrated. Thus, the sponsor and applicant must provide copies of a valid marriage certificate and proof of separation from previous spouses, if any. Other relevant documents such as wedding photos, invitations, reference letters and joint documents, would also be helpful. Although a Canadian citizen or permanent resident can legally sponsor the spouse even a day after getting married, they would still need to convince an officer that the marriage is genuine and continuing.

Common law partners refer to couples living together in a committed relationship without getting married. They can be considered common-law partners from day one. For purposes of immigration sponsorship however, common law partners must have lived together for at least one year. This must be proven by a declaration of common law union along with other documentary evidence such as joint bank accounts, apartment lease, insurance beneficiary designation, income tax returns, etc.. The burden of proving common law status for at least a year is on the applicants so the more evidentiary documents submitted, the better.

Conjugal partners refer to couples in a committed relationship at the same level of commitment as spouses and common law partners, but who are prevented from marrying or living together by some compelling circumstances - e.g. laws prohibiting same sex union in ultra-conservative countries, war, detention, etc.. This is much more difficult to prove and is thus rarely approved as basis for an immigration sponsorship.

Any of the above relationships can be a heterosexual or a homosexual partnership.

Factors Considered

The main issue in a spousal sponsorship application is the genuine and continuing nature of a marital, common law or conjugal relationship. The previous immigration regulations provided that a person will not be considered a spouse if the marriage, common law or conjugal partnership is not genuine AND was entered into primarily to acquire an immigration benefit. A regulatory change which took effect in September 2010 provides that a person will not be considered a spouse if the relationship was entered into primarily to acquire an immigration benefit OR is not genuine. While seemingly innocuous, the simple change of the conjunctive word “and” to “or” could actually have a significant

impact on spousal sponsorship applications. That is, applicants now have an even greater burden of proving both the genuineness and the lack of a primary intent to obtain an immigration privilege. Previously, if a marriage or relationship is found to be genuine, the conclusion necessarily follows that it was not entered into primarily for an immigration purpose. Now, a sponsorship applicant in a genuine relationship may still be refused if the reviewing officer concludes that the primary purpose of the marriage or partnership was to obtain an immigration benefit.

Overseas versus Inland Applications

There are two avenues for spousal sponsorship applications. The first is the overseas sponsorship whereby after the approval of the sponsor's eligibility at the case processing centre in Mississauga, the permanent residence application is forwarded to the appropriate overseas visa office. If the person being sponsored needs to be interviewed, he or she will have to attend at the visa office in person. One advantage of this type of application is that there is a right of appeal with the Immigration Appeal Division (IAD) of the Immigration Refugee Board if the sponsorship application is refused. Aside from allowing submission of new evidence on appeal, the IAD also has jurisdiction to consider evidence of any relevant humanitarian and compassionate factors.

The other avenue is via the Spouse or Common-law Partner in Canada class. As the name implies, this sponsorship is allowed only for spouses and common law partners (and not for conjugal partners). This type of application assumes that the spouses or common law partners are already living together in Canada and that it will create undue hardship if the application is processed overseas. Out of status spouses may also be sponsored under this category. Please note however, that in case the application is refused, there is no right of appeal. The only remedy after a refusal is the filing of an Application for Leave and Judicial Review with the Federal Court. A positive decision in the Federal Court application can, at best, result in a quashing of the decision but that the matter will be sent back to CIC for a redetermination by another visa officer. There may be instances where the redetermination could still lead to a negative decision.

Five-Year Sponsorship Bar and Two-Year Conditional Status

Some regulatory changes have been introduced by the previous government that were meant to deter sponsorship fraud. These include the prohibition for a sponsored spouse to sponsor another person within five years from becoming a permanent resident.

The second is the grant of permanent residency to sponsored spouses on the condition that he or she will live with the sponsor for two years from becoming a permanent resident. This condition only applies if the spouses have no common child and the relationship is less than two years old when the sponsorship application was submitted. Exceptions may be granted for those who are forced to leave the sponsor due to spousal abuse or neglect. However, the present government promised to remove this conditional permanent residency for sponsored spouses. We will see if this, along with other campaign promises, will be fulfilled.

The above is for information purposes only and not meant to provide specific legal advice. If you are planning to submit this type of application and have particular concerns, it will be advisable to consult a trusted legal professional.

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