

New Immigration Measures to Address Sponsorship Fraud

A recent series of articles in the Toronto Star dealing with experiences of victims of spousal sponsorship fraud prompted me to revive this topic that I have discussed a few times in this column. Sadly, these stories and even some comments from readers reveal a continuing lack of knowledge and/or misunderstanding of the complex and ever-changing immigration laws, including those involving spousal sponsorships.

There are two types of spousal sponsorship applications. The first is the outside Canada sponsorships that are initially submitted to the Citizenship and Immigration Canada (CIC) Case Processing Centre in Mississauga, Ontario and then forwarded to the visa office where the applicant spouse is a resident or citizen. The second is the inland application under the Spouse or Common-Law Partner in Canada class that is submitted to the CIC Case Processing Centre in Vegreville, Alberta. Depending on the sponsor and the applicant's situation, there are pros and cons in choosing either option which are best canvassed with an experienced immigration advisor.

Let me also clarify that contrary to common misconception, spouses of live-in caregivers are not "sponsored spouses" but are concurrent applicants if they are included as accompanying dependents in the LCP permanent residence applications.

These newspaper accounts of sponsorship fraud actually describe a scheme that CIC has long been referring to as "marriages or relationships of convenience." Due to the increased incidence of these types of fraud, CIC has imposed stricter regulations for this class of immigration applications, i.e. family class applications for spouses, common-law partners and conjugal partners. As discussed in a previous column, these changes are as follows:

Conjunctive to Disjunctive Test for Bad Faith Marriage

In September 2010, CIC amended section 4 of the *Immigration and Refugee Protection Regulations (IRPR)* as a way of discouraging so-called marriages of convenience. Prior to September 2010, the test was whether or not the relationship is "genuine" **and** was "entered into primarily" for the purpose of acquiring an immigration benefit (conjunctive test). Under the new regulation 4 of the IRPR, the test has become whether the relationship is "genuine" **or** was "entered into primarily" to gain an immigration benefit (disjunctive test).

What a huge difference a single word change could make. That is, by changing the word "and" to "or", spousal sponsorship applications have undergone much stricter scrutiny not only at the visa offices but also at the Immigration Appeal Division (IAD). In the past, it is often enough that the visa officer or IAD board member finds that the relationship is genuine to be convinced that it was also not entered into primarily for immigration purposes.

With this single word change, even a genuine relationship may now result in a refused sponsorship application if there is a finding that the parties entered into such relationship primarily to gain an immigration benefit. As a result, many sponsorship applications based on genuine relationships

may end up being refused if the person being sponsored has a problematic immigration history and the sponsorship application happens to be the only option available for the sponsored spouse to become a permanent resident and avoid separation from the sponsoring spouse.

For more reasonable and sympathetic visa officers and IAD board members however, there is still room to argue that in the case of genuine relationships, gaining an immigration benefit is never the primary purpose for submitting a sponsorship application. It is hoped therefore, that reasonable decision makers will prevail so that this regulatory change will not lead to more unjust refusals of spousal sponsorship applications from genuine spouses and partners.

Five-Year Bar

In March 2012, the proposed amendment to regulation 130(2) of the IRPR entered into force. This change prevents anyone “who became a permanent resident as a spouse, common-law or conjugal partner from sponsoring a subsequent spouse, common-law or conjugal partner for a period of five years following the date they became a permanent resident.”

Like the previous change, the purpose behind this regulatory amendment is to discourage sponsored spouses and partners from entering into a relationship of convenience to circumvent Canada’s immigration laws, separating from their sponsor then applying to sponsor a new spouse or partner shortly afterwards.

Conditional Permanent Residence for Sponsored Spouses

Most recently, or in late October 2012, the new CIC regulations provide that the permanent resident status of those who were sponsored by their spouses, common-law or conjugal partners, will be conditional on their having lived in a legitimate relationship with their sponsoring spouses, common-law or conjugal partners for a period of at least **two years** after becoming a landed immigrant. This will apply to spouses or partners in a relationship of two years or less and who have no children in common with their sponsor at the time they submit their sponsorship application.

However, there are exceptions to this conditional permanent resident status requirement. The exceptions include sponsored spouses or partners who are able to provide evidence of abuse or neglect. “Abuse” could be either of the following: “(i) physical abuse, including assault and forcible confinement; (ii) sexual abuse, including sexual contact without consent; (iii) psychological abuse, including threats and intimidation, and (iv) financial abuse, including fraud and extortion.” “Neglect” on the other hand, consists of “the failure to provide the necessities of life, such as food, clothing, medical care or shelter, and any other omission that results in a risk of serious harm.”

Please note that the above information are being provided for educational purposes only and not intended to provide specific legal advice. It is strongly advised that you consult with a legal professional to discuss your particular circumstances.

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