

Visitor Status to Permanent Residency: Some Clarifications

By Maria Deanna P. Santos

Since the last time I wrote on this subject a couple of years ago, I continue to receive inquiries on how to “convert” one’s visitor status into a work permit or permanent resident visa while remaining in Canada. Apparently, there are still those who assume that once they are able to obtain a visitor visa to enter Canada, it would be much easier to work on their “papers” while inside the country rather than to submit their permanent resident applications from overseas. It does not help that the current processing times for permanent resident applications are still taking a number of years to complete. Any potentially quicker alternative therefore becomes a much more attractive option for many.

Depending on one’s personal circumstances, the above assumption may not necessarily hold true and in some cases, prove to be utterly false. It often becomes a source of disappointment and/or frustration for many to realize that converting one’s status from a visitor to a worker or permanent resident is not as simple as they may have initially thought. Hopefully, the following will help clarify some of the misconceptions.

Visitor status is allowed only for a maximum period of six months at a time, regardless of the validity period of one’s temporary resident visa. One can however apply for an extension, which may or may not be granted depending on the personal circumstances of the applicant. While the extension application is pending, one is deemed to have implied status, provided that the application was submitted prior to the expiry of the initial authorized stay. But as soon as a decision is received and the extension application is refused, the applicant is deemed to have lost status and must leave Canada immediately.

To convert one’s visitor status into a work permit on the other hand, one must first obtain a genuine job offer from a Canadian employer. The Canadian employer will then have to apply for a confirmation of the job offer (a positive labour market opinion or LMO) from Service Canada. The confirmation will be granted if the reviewing officer is satisfied that certain factors are met, including the genuineness of the job offer, that sufficient recruitment efforts were undertaken to hire Canadians and permanent residents for the position and that there is a current labour market shortage that the foreign worker is seeking to fill. Once an LMO is granted, the foreign worker may use this to apply for a work permit.

An initial work permit application however, must be submitted at a visa office or at a port of entry. The option of applying at a port of entry is only available to applicants coming from visa-exempt countries. Since the Philippines is not a visa-exempt country, Filipino work permit applicants who are in Canada on a visitor visa must apply at the nearest visa office, i.e. the U.S.. If called for an interview, the applicant must be able to travel to the U.S. on the scheduled interview date. This often becomes a problem if the applicant has

no U.S. visa as it can prove difficult to obtain a U.S. visa from Canada if one does not have permanent resident (or at least a worker or student) status here. Therefore, it may be a smart move to also obtain a U.S. visa from Manila (where one has permanent status and clear proof of establishment) prior to coming to Canada if one plans to eventually apply for a worker, student or permanent resident status.

There is also the option of applying for a student visa once the applicant has received an acceptance for full time studies from an accredited educational institution for a period of at least six months. Similarly, an initial study permit must be applied for at a visa office outside of Canada.

The option of applying for a work permit, study permit or to change conditions from within Canada is generally available only to those who initially entered Canada on valid work or student visas and later wish to renew the same.

Applications for permanent resident status are generally submitted to visa offices where the applicant is a national and/or has been legally residing for at least a year. Recent amendments require that initial application packages (completed forms and fees) for all federal skilled worker applications must be submitted to the Central Intake Office (CIO) in Sydney, Nova Scotia which conducts the initial screening of these applications. Once approved by the CIO, the applicant is given 120 days within which to submit the complete application package to the appropriate visa office.

Inland permanent resident applications on the other hand, are only allowed for those falling under the Live-in Caregiver Class, the Spouse or Common Law Partner in Canada class, the Permit holder class, Refugees and Protected Persons, and those seeking permanent resident status based on Humanitarian and Compassionate grounds. It must be noted however, that there are specific legal requirements for each class which may not necessarily be met by all permanent resident applicants. Please be wary of any advice received which encourages lying or making up stories to qualify under any of the inland categories. Misrepresentation is a serious offence under Canadian immigration law. It could lead to removal proceedings even long after one has obtained permanent resident status or even Canadian citizenship.

It is therefore strongly advised that one must think and assess the situation very carefully before resigning from one's job or selling everything one owns in the home country after obtaining a temporary resident visa to visit Canada. A temporary resident (visitor) visa is not a guarantee to obtaining long-term legal status in Canada. Please do not be misled by claims to the contrary.

Finally, please note that the above is meant for information purposes only and not to provide specific legal advice. If you wish to inquire about your particular situation, please contact a licensed immigration lawyer or consultant.

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