

Caregivers Must Be Granted Permanent Residence Upon Arrival

In last month's column, I wrote about the recent major changes to the temporary foreign worker program that were announced by the government in June 2014, as well as the likelihood that the Live-in Caregiver Program (LCP) will be next on the chopping block.

This "likelihood" threatens to become a reality anytime soon. In July 2014, the office of Citizenship and Immigration Canada (CIC) Minister Chris Alexander invited a handful of people from the Filipino community in Toronto to a consultation meeting where he laid out the government's proposed changes to the LCP. The proposed changes include making the live-in requirement optional and removing the government's obligation to grant permanent residency to live-in caregivers. Instead, the government proposes to incorporate caregivers into the Canadian Experience Class. However, various details remain unclear as none of these proposals have been publicly communicated in writing.

Sadly, it appears that these the so-called consultation meetings were only open to a limited number of invitees. There were no official drafts of the proposals provided nor any public record of what was discussed except for informal minutes prepared by some of the attendees. Hence, the information disseminated outside of these closed-door consultation meetings was based on the subjective understanding or best recollection of those who were privileged to attend.

According to the attendees, the CIC Minister said that, "We do not want these to be the government's reforms. We want this to be your (the stakeholders') reforms." If this is true, then it would have made better sense if the government openly invited proposals from key stakeholders, especially from the caregivers themselves, instead of framing the proposed changes on the government's terms.

The issues that the government allegedly wishes to address in introducing the proposed reforms to the LCP are the 1. vulnerability of live-in caregivers 2. growing backlog and lengthy processing time for permanent residence applications and 3. prolonged family separation. These issues have long been pointed out by critics and advocates as among the main flaws of the LCP. The fact that this government finally admitted the existence of these problems is a promising start.

However, we hope that the ongoing process of consultations will also reflect not only an acknowledgment of these serious issues, but also a sincere desire to resolve the same. These consultation efforts must be extensive and meaningful, and not simply token consultations conducted shortly before announcing the changes that have actually been firmed up.

Although the key stakeholders in the LCP include not only the caregivers but also the employers, we cannot deny the fact that the interests of caregivers and employers will never be completely aligned. Due to the intersecting disadvantages arising from their gender (caregivers are mostly women), precarious immigration status (temporary workers), origin (mostly from the Philippines or other developing countries), the scales are tipped against the caregivers vis-a-vis their employers. It is not only the caregivers, but also their family's future that are at stake in any changes that will be introduced to this unique immigration program meant to address an undeniable labour market shortage in Canada.

One thing that the employers could affirm is the great need for caregivers in Canada due to the lack of a universal daycare program for children, adequate and affordable care for the disabled and the increasingly aging population of Canada. Having affirmed this great need, the only effective way to

address the three major issues identified will be to consider the program from the caregivers' perspective. What factors lead to their vulnerability? What forms of hardship result from the lengthy processing of their permanent residence and the prolonged family separation?

Removing the live-in requirement will greatly help reduce the vulnerability of caregivers. Granting them open or generic work permits might be even better. However, as stories of hardship under the LCP have shown, the caregivers' long wait as temporary foreign workers and while their permanent residence applications are in process, only served to facilitate their ongoing vulnerability not only to work-related exploitation but also to painful and prolonged family separation.

The only way therefore, to level the playing field and protect the human rights of caregivers while meeting the great demand for this occupation, is to grant them permanent residence upon arrival in Canada. To ensure that they will abide by the purpose of their entry to Canada and integrate well in the Canadian system, certain conditions can be imposed such as slightly higher education and/or language skills and a caregiver employment contract with a qualified Canadian employer.

However, compliance with the conditions should be enforceable in the realm of employment law or contract law, and not immigration law. The eventual breakdown of a caregiver-employer relationship should not lead to the stripping of one's permanent residence, but must be dealt with under the appropriate legal forum (e.g. employment standards dispute or a civil case for breach of contract). The carrot and stick approach under the current LCP has forced its caregiver participants to endure abuses and live in constant fear of removal if the immigration conditions are not satisfied, despite many years of diligent service to their Canadian employers and valuable contributions to the Canadian economy. The injustices committed against caregivers are well-known, have been tolerated for far too long and simply have to end.

The allegation that the LCP is turning into a family reunification program does not only appear to be an exaggeration, but also smacks of discrimination. It implies that there are certain classes of people who may be allowed to hire caregivers but not the former caregivers themselves and/or their families. If the prospective caregiver and the prospective employer meet the qualifications and the job offer is made in good faith, why should their kinship matter? Doesn't it only make sense that more relatives would prefer to hire people they already know and completely trust to take care of their children, elderly or disabled family members? And is the Canadian immigration objective of family reunification meant to be applied only to those coming under the family sponsorship class? Isn't this objective also meant to serve as a guiding principle in any class of immigration applications?

As in the recent CBSA investigation of so-called "runaway nannies" (caregivers who allegedly leave their employers immediately upon arrival in Canada) there are undeniably abusers in any program. However, these isolated cases should not be blown out of proportion to justify laws that will result in grave prejudice to the law-abiding majority. If there are truly such cases, then the solution should focus on fair and proper enforcement and not in painting all other caregivers with the same tainted brush.

This is to reiterate therefore, the need to push for changes to the LCP that will fully take into consideration the systemic issues which lie at the root of the problems within the program. It is about time that the LCP is replaced by something far more equitable and humane for its participants and their families. This will only be realized if caregivers are granted permanent resident status upon arrival in Canada.

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