

Caregivers' Conference Highlighted LCP Shortcomings

On 24 September 2011, the First Ontario Alliance of Caregivers Canada (FOACC) held the first general conference of caregivers in Ontario. Aside from the substantial number of individual participants and caregiver organizations represented, what was even more impressive was the fact that it was initiated, planned and executed by caregivers themselves. Considering the organizers' limited resources, the full day event was a commendable, worthy, productive and timely endeavour. Congratulations to Terry Olayta, Jocy Tomas, all the organizers and participants of this conference!

For the caregivers who participated at the conference, one thing is crystal-clear: serious problems remain within the Live-in Caregiver Program (LCP). Their group and plenary discussions confirmed that the age-old problems relating to employer and agency abuse (such as long hours of work with no overtime pay, heavy household work not related to caregiving duties, exorbitant recruitment fees, etc.) remain very much alive and rampant even after the supposed legal reforms enacted to protect and promote the rights of caregivers.

Even more distressing in the face of these ongoing abuses are the constantly (and rapidly) increasing processing times for LCP work permit and permanent residence applications which are creating new and even worse problems for a huge number of caregivers.

Confusion, misinformation, anxiety, insecurity and stress, are just some of the known repercussions of these lengthy processing times. These translate into even longer delays in obtaining the prized permanent resident status and achieving the much longed for family reunification.

In last month's column, I wrote about the very issue of processing delays and the related issue of implied status. After having heard the many tales of woe that were expressed by caregivers, I thought that it may be worthwhile reiterating this discussion, in the hope of assisting those who are still very much befuddled not only by the processing delays but also by their legal and practical implications.

The term "implied status" appears to be widely misunderstood. This is a legal principle used in immigration law to refer to temporary residents who were able to apply for a renewal of their temporary resident status (whether as a visitor, student or worker) prior to the expiry of their present temporary resident status document (i.e. visitor record, study or work permit). They are deemed to continue having valid temporary resident status (i.e. implied status) under the same terms and conditions of their last temporary resident document even after its expiry and until a decision is received on their renewal application.

It is important to emphasize that implied status only applies if the application for renewal was made prior to the expiry of the previous permit. If the renewal application is made even just a

day after expiry and even if accompanied by a restoration application, implied status cannot anymore be invoked.

It is likewise important to note that implied status only applies to the terms and conditions under the previous temporary resident document. This means that if the expired work permit was an employer-specific one, then implied status is recognized only while you are working for that same employer. If the foreign worker would want to work for another employer not named on the previous work permit, then the worker will need to apply for a new employer-specific work permit naming the new employer or wait for the issuance of an open work permit which authorizes work for any employer.

For LCP participants, “implied status” is the authorization for the live-in caregiver to continue working legally in Canada if s/he has submitted an application to renew his/her work permit or submitted an application for an open work permit, prior to the expiry of their previous work permit. However, the authorization only extends the same terms and conditions under the previous work permit. Hence, the live-in caregiver is expected to continue working for the same employer and not for any other. If the caregiver wishes to leave the previous employer and work for another employer, s/he will either have to apply for a new LMO-based work permit, or wait for the issuance of the open work permit.

Since it is currently taking such a long time to receive the LCP open work permits, caregivers are often left with the difficult choice of waiting it out with the current LCP employer or applying for a new LMO-based work permit which could take up to several months to process. Worse, if it is the employer who terminates the caregiver’s employment during the period of “implied status” and the caregiver is unable to readily find another LCP employer, the caregiver is left with no legitimate source of income while awaiting the issuance of their open work permits.

Even more bad news is if the caregiver’s public health (e.g. OHIP) coverage expires during the period that s/he is on implied status, the Ministry of Health will not renew OHIP coverage until the caregiver receives a new work permit (whether open or employer-specific). This is especially unfortunate if the caregiver is suffering from a medical condition which will require costly treatment and medication.

Unfortunately, the processing delays seem to be getting worse. As of this writing, the CIC website states that the processing time for obtaining LCP first stage approval (and open work permits) is 17 to 18 months. It is dangerously getting close to the 24-month mark, which will imperil the permanent residence dream of many LCP participants.

Although I remain hopeful that things could still get better, I also know that this will only be realized through vigilance, persistent advocacy and unity. The caregivers’ conference was obviously an important step in this direction. Let us therefore support their call for genuine LCP reforms, in line with the universal goal of creating a just, equitable and humane society for all.

The author is an immigration lawyer in the GTA and may be reached at deanna@santoslaw.ca.