

## **Permanent Residence for Caregivers - Soon to End?**

At a recent national conference on immigration law, one of the speakers in the panel on caregivers stated that there has been a "paradigm shift" in Canada with respect to the treatment of caregivers. This is based on the fact that recent changes indicate a trend towards eliminating the guarantee of permanent residence for this class of temporary foreign workers.

For instance, although the live-in caregiver provisions in the Immigration and Refugee Protection Regulations still exist, they are in the process of being "phased out" after the Ministerial Instructions creating the two new caregiver pathways (Caring for Children and Caring for People with High Medical Needs) took effect on 30 November 2014.

These Ministerial Instructions have mandated that no new permanent residence applications under the old Live-in Caregiver Program (LCP) will be processed unless the initial caregiver work permit was based on a labour market impact assessment (LMIA) that was requested prior to the 30 November 2014 effectivity of the new caregiver pathways. However, the instructions also state that "this will remain in place unless otherwise instructed in a future Ministerial Instruction."

Aside from leaving many questions unanswered, these November 2014 Ministerial Instructions have also created a lot of confusion on the part not only of caregivers but also of employers seeking to hire temporary foreign workers as caregivers.

Not many are aware that the Ministerial Instructions are effective only for a period of 5 years or until 29 November 2019 (hence only a few years left). So what happens after this expiry period? Will the existing caregiver pathways be extended by a new set of Ministerial Instructions? Will the LCP be reinstated? Or will the pathway to permanent residence for foreign caregivers be totally eliminated?

For now, the LCP under the IRPA regulations exists for the purpose of completing the permanent residence application process for those who came before the 2014 changes took effect. Hence, those who initially arrived as temporary foreign workers based on caregiver LMIA's that were applied for before 30 November 2014 have the option of applying for permanent residence under the LCP or under one of the two caregiver pathways if they meet the relevant requirements.

According to IRCC, there is currently a pending inventory of about 40,000 permanent residence applications under the LCP which had increased average processing times for this class of PR applications to 50 months (as published in the IRCC website).

Meanwhile the permanent residence applications under the two new caregiver pathways have not even reached their annual quotas of 2750 per category. With the upcoming expiry of the Ministerial Instructions in two years, there is a good chance that the pending LCP PR applications may even "outlive" applications under the two new caregiver pathways despite the fact that the LCP had been effectively killed by the same Ministerial Instructions

The IRCC representative said that they expect to finalize processing of the LCP PR application inventory/backlog within the next two years. However, it will likely take longer than that if the present rate continues. Meanwhile, there exists a continuing demand for foreign caregivers, to care for children, the elderly and persons with disabilities, whether on a live-in or live-out basis. Hence, work permits are still being applied for and issued to prospective full time caregivers for Canadian families (based on tighter LMIA and work permit requirements).

Once the LCP backlog is eliminated and the Ministerial Instructions expire, it remains to be seen what option will be made available for the caregiver work permit holders who will not qualify for permanent residence in any other immigration category. Will the permanent residence pathways for caregivers (other than the nurses who may qualify under Express Entry) be truly and totally eliminated?

If the permanent residence options, whether under the LCP or the Caring for Children and Caring for People with High Medical Needs classes will end, is it fair to continue issuing temporary work permits to prospective caregivers?

There is a prevailing view that removing PR pathways will not lead to the disappearance of foreign caregivers since there continues to be a high demand for their services, due to the increasingly aging population and lack of a universal childcare system in Canada. Often cited as examples are the experience of countries like Hong Kong, Singapore and the Middle East where there are no guaranteed paths to permanent residence for caregivers but which continue to receive a significant influx of foreign caregivers or domestic workers.

If the current government is following the examples of these other countries which treat foreign caregivers as temporary workers who do not deserve full membership in their host countries, then Canada is not being true to its reputation as a world leader in promoting equality, fairness and human rights. This is also not in line with recent policy changes meant to reduce suffering and exploitation of the most vulnerable.

After the four-year cumulative duration limit had been repealed, many of these temporary foreign workers, especially those not deemed to be "high-skilled" hence not qualified under the Express Entry system, are still left in immigration limbo and end up working precariously because their status is tied to a specific employer (i.e. cannot leave or be granted an extension without a sponsoring employer) or are unable to qualify for permanent residency.

Hence, if the permanent residence option is totally eliminated for caregivers, then we are effectively recreating an underclass of workers who will become even more vulnerable to various forms of abuse and exploitation.

I refuse to believe that this is the Canadian way and continue to trust that the present government will eventually do the right thing, which is to grant foreign caregivers permanent residency at the outset. Considering their extremely valuable contributions to Canadian families in particular and to society in general, caregivers deserve nothing less.

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