

Processing delays and implied status

If you are a live-in caregiver awaiting decision on your inland permanent residence and/or open work permit applications under the Live-in Caregiver Program (LCP), then you are most likely well aware of the current lengthy processing delays.

While it used to take only a few months (and for a long time, six months, until it suddenly jumped to 11 months or so), it is now taking CIC some 16 to 17 months (and even longer for some!) to render the initial approval in principle and accompanying open work permit to caregivers who have completed the 24-month or 3900-hour live-in caregiving requirement within four years of their arrival in Canada. For those who have received their open work permits, the waiting period before the final decision is received can likewise drag on for years on end, especially if the caregiver has dependent family members included in the application.

CIC attributes the long delays to the sudden surge of LCP applications and their consequent inability to meet the increasing demand. After having seen many letters from CIC addressed to LCP permanent residence applicants, it also appears that the delays can be attributed to a much stricter scrutiny of supporting documents submitted by the caregiver applicant and their dependent family members, among others. Although I have indeed come across instances involving falsified birth certificates, marriage certificates and the like, these are clearly the exception rather than the rule. Unfortunately though, these unscrupulous minority have prejudiced the greater majority who have followed the rules, but who will nonetheless have to endure long waits because CIC needs to spend much more time verifying the genuineness of all submitted documentation.

As a result of these increased processing delays, several live-in caregivers face many negative consequences and are enduring even greater hardships.

A typical response from CIC would be that live-in caregivers will have “implied status” while awaiting the approval in principle and their open work permits so they should still be able to work legally in Canada.

Unfortunately, things are not as simple as CIC would like to believe. What this response fails to appreciate are the many reasons why remaining to work as a live-in caregiver is not the most ideal situation hence obtaining an open work permit as soon as possible will help alleviate their many hardships and concerns.

First of all, what does “implied status” really mean?

In simple terms, “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 LMO-based). This is especially unfortunate if the caregiver is suffering from a medical condition which will require costly treatment and medication.

Had there been a much shorter (or no) delay in the issuance of LCP open work permits, these hardships will be minimized, if not eliminated.

We hope that these processing delays will soon be remedied (e.g. through increased or more efficient bureaucratic staffing) and will not just keep getting worse. Otherwise, we may see several caregivers being caught by the four-year cumulative duration limit for all temporary foreign workers by April 2015. If so, will this truly mean the end of the LCP, as many critics would like us to believe?

CIC has, on various occasions, denied that there are plans to end the LCP. Although this may sound as a relief to many, we also hope that CIC will continue to remain receptive to the LCP participants' legitimate concerns and be open to enacting further reforms towards creating a more just and humane program for this vulnerable class of temporary foreign workers.

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