

## **Family Separation in the Immigration Context**

Amidst the public warnings and stricter government scrutiny of this class of immigration applications, cases of spousal sponsorship fraud still seem to abound. I have spoken with a number of Canadian sponsors who, after learning that their foreign spouses only married them for purposes of gaining immigration status in Canada, wanted to know how they can have their sponsored spouses deported. At this point, the sponsored spouses have already been granted permanent residence and the sponsors cannot simply revoke the three-year undertaking to support that they submitted with the sponsorship application. As much as they would want these alleged fraudsters deported immediately, they are disappointed to learn that the legal processes which need to be undertaken before the sponsored spouse can be deported from Canada can take a long time.

Meanwhile, there are couples in genuine, committed and loving relationships who are forced to endure prolonged family separation due to the immigration officers' overzealous attempts at disputing the genuineness of marital/common law/conjugal relationships. For instance, in highly-intimidating immigration interviews, visa officers rarely consider the fact that "failure" in such interviews can often be attributed to language barriers, nervousness or even cultural differences or misunderstandings.

To avoid these unfortunate situations, it is very important first and foremost, that the prospective sponsor fully understands the implications of a spousal sponsorship undertaking aside from being certain of the sponsored spouse's intentions. Unfortunately, there is no foolproof way to determine the future of any relationship and that a short-term relationship does not necessarily mean that it was not genuinely entered into at the outset. Hence, the sponsor must be fully aware of the potential consequences if the relationship turns out to be fraudulent and/or breaks down unexpectedly within the three-year period of the sponsorship undertaking.

Once the sponsor fully understands the nature and implications of the undertaking, the sponsorship application must not only be thorough and comprehensive, but also presented in such a way as to avoid any doubt or confusion on the part of the reviewing officer. CIC, on the other hand, will do well to conduct further training of visa officers to facilitate a better understanding of cultural differences and personality types that will avoid a one-size-fits-all standard for determining the genuineness of married, common-law or conjugal relationships.

### *Separation of Live-in Caregiver Applicants and their Families*

Another type of family separation which has been sadly and pervasively affecting many prospective permanent residents involve live-in caregivers and their families. Participants of the Live-in Caregiver Program (LCP) initially enter Canada on work permits and are not allowed to bring their families at this time. It is only after having satisfied the requirements of the LCP (two years of full time live-in caregiving work within four years of arrival) would they qualify to

apply for permanent residence for themselves and their families, which could easily take several more years to be processed.

In this type of permanent residence application, the caregiver is applying concurrently with her family members and not “sponsoring” them. As such, they are all required to pass the medical and security clearance requirements. Although changes to the LCP regulations removed the requirement of a second medical examination for the principal applicant caregiver, the accompanying family members would still need to undergo the medical and security checks at the permanent residence application stage. Even if the family members are declared to be “non-accompanying dependents,” they are still required to undergo medical and security checks. If one family member is found to be inadmissible, this would render everyone, including the principal applicant caregiver, inadmissible to Canada.

There are all sorts of complicated scenarios that may arise from this requirement. First and most prevalent of all, a married caregiver who has been away from her family for many years while working as an overseas worker, often ends up with a broken home – i.e. a philandering spouse and/or alienated children who refuse to finish school or become addicted to vices. When it is time to process the family’s permanent residence applications, these family members could either refuse to undergo the required medical examinations, provide the necessary police clearances or worse, fail them for various unfortunate reasons. For caregivers who have become estranged from their husbands, they would also need to obtain a legal separation, annulment or divorce if they want them removed from their permanent residence applications. As these further legal processes not only take time but also drain the live-in caregiver’s extremely limited financial resources, many find themselves trapped in a situation where their permanent residence applications are long delayed or worse, denied, for the simple reason that they and their dependents are unable to meet the additional requirements within a prescribed period of time.

The conflict of law issues involved (e.g. the differences in Philippine and Canadian and family laws such as the lack of divorce and prohibition against collusion in annulment cases in the Philippines) could result in further complications not only in the caregivers’ permanent residence applications but also in the legal status of their marriage and family lives. While obtaining a divorce in Canada or entering into a separation agreement with spouses may be a quick solution for some in having their permanent residence applications finalized, it is also important to be fully aware of the implications of such remedies, which could haunt the spouses even long after the permanent residence application had been granted or denied.

*The above are provided for information purposes only and not meant to be taken as legal advice. If you have related concerns, it is highly recommended that you consult with an immigration legal professional to discuss your particular circumstances.*

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*On a personal note, I would like to send happy birthday wishes to my dearest niece Francesca (October 14) and to her mom Cora (October 31). Take care and God bless!*

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