

Dealing with an Imperfect Immigration System

Citizenship and Immigration Canada recently posted a notice on its website which reads:

“June 11, 2013 — *The Professional Association of Foreign Service Officers (PAFSO) union is currently taking strike action. PAFSO union members responsible for processing visa applications have been walking out of offices in Canada and overseas.*

Posted processing times for both temporary and permanent resident visa applications do not take into account work stoppages.

Anyone applying for a visa should anticipate delays and submit their application as far in advance as possible.

Contingency plans are already in place to ensure all offices remain open and are providing at least a minimum level of service. Priority will be placed on urgent humanitarian applications. CIC continues to closely monitor the situation.”

This notice serves to highlight once more the fact that Canada’s immigration system is far from being perfect and will always be subject to human limitations and fallibility.

For instance, processing delays are the most frequent complaint vis-à-vis immigration applications. As many people know only too well, immigration applications can easily fall into a seeming blackhole for months and even years on end. However, this should not lead to complacency and/or helplessness. Instead, this reality should encourage us to come up with efficient and creative ways of dealing with such a system, imperfections and all.

In my immigration law practice, I have often encountered situations where clients were prejudiced by errors committed not by them, but by the frontline immigration officers or clerks handling their files. The errors could simply be typographical: e.g. that their personal or contact information were wrongly entered or that the notices were sent to the wrong address. They may also consist of unexplained processing delays in the issuance of decisions or of visas and landing documents long after a positive decision has been rendered. Worse, the errors could also be substantive, i.e. arbitrary decisions or reasons for refusal especially in applications involving the exercise of discretion which makes it difficult to predict outcomes despite what the law, regulations or judicial precedents provide.

Typographical errors can often be dealt with most easily by correcting them at the earliest opportunity. Pointing out these errors to the appropriate office should be simple enough if the applicant realizes the mistake earlier on. A bigger problem could arise when the communication from CIC is never received because it was sent to a wrong address. One way to avoid this problem is to regularly check with the CIC call center or to follow up directly with the office concerned if a decision is not received within the “normal” processing times that are published

on the CIC website. By doing so, the applicant will eventually learn if a communication has been sent and if so, provide notice to CIC that it was never received.

Procedural delays, on the other hand, are clearly part of a bigger problem within the government bureaucracy and is something that needs immediate reform. However, further delays can be reduced if not avoided when one submits as “complete” an application package as possible and makes full disclosure of all relevant information to avoid the need for CIC to require further submissions.

In the case of substantive errors (or procedural errors resulting to violations of natural justice), the remedies could include making a request for reconsideration, invoking a statutory right to appeal or submitting an application for leave and judicial review with the Federal Court. These procedures have specific legal requisites and limitations and will not necessarily lead to desired outcomes. At the very least, they give one a second kick at the can from the perspective of another adjudicator, judge or decision maker.

That having been said, it cannot be overemphasized that a healthy dose of patience and perseverance are required when dealing with our immigration system. We should therefore avoid contributing to the problem by failing to be thorough, honest and judicious in all submissions or representations made. At the same time, we need to remain vigilant and persistent in advocating for positive change until our messages are fully heard and acted upon.

Even though we might sometimes find ourselves seemingly trapped and totally discouraged, taking proactive steps to address the issues is the only way forward. When we always try our best to overcome struggles within an imperfect system, we can still remain perfectly confident and hopeful that things can only get better.

For now, it is hoped that the current strike action by Canadian visa officers worldwide will help in resolving some of the deeply rooted problems within the immigration system, instead of making them worse.

This article is for legal information purposes only and not intended to provide specific legal advice. It is strongly advised that you consult with a legal professional to discuss your particular circumstances.

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