

Temporary Residents and the Removal Process

In the past few weeks, there were news reports to the effect that the Canada Border Services Agency (CBSA) is allegedly intensifying efforts to weed out so-called “illegals” in an attempt to remove them from Canada as quickly as possible.

Misunderstandings and misconceptions about the removal process have raised fears among many temporary residents in Canada, whether they still have valid status in Canada or not. Some of those who are here as visitors, workers or students whose initial permits have expired but whose extension applications are still pending, fear that they may just be picked by the authorities and detained since they could not show any proof of legal status.

Such fears are misplaced if the temporary resident has submitted an application to renew their temporary resident status before the expiry of their current status in Canada and a decision on the application is not yet received. Provided all legal requisites are met, the temporary resident who has a pending renewal application will have the benefit of “implied status” under the Immigration and Refugee Protection Act (IRPA) and its regulations. The implied status ends on the day that a decision is received on the renewal application, granting or refusing the extension requested.

Only when the renewal application is refused, will the applicant technically lose temporary legal status in Canada and will be well-advised to leave the country as soon as possible so as not to prejudice any future applications to return to Canada.

For those who have lost their temporary legal status in Canada and were unable to submit an application for a renewal, there is still the option of applying for a restoration of status within 90 days of having lost temporary status and there is a reasonable legal basis for requesting the restoration (i.e. compelling reason to extend visit, a positive labour market opinion based on an existing job offer or continuing studies). If the 90 days have passed, the option of seeking a restoration will not anymore be available but there may still be other options, depending on the circumstances.

A person who has lost legal temporary status in Canada need not simply live in perpetual fear of being “picked up” by enforcement officers and thrown on the next plane out of Canada. If there are compelling reasons or factors involved, it will be best to consult a trustworthy immigration advisor to discuss possible options to legalize one’s status.

For instance, if there are genuine risks to one’s life if returned to one’s home country, there are applications that can be made to seek protection from any such harm. These remedies however, should never be abused by agreeing to unscrupulous advice such as concocting stories to support one’s application for permanent resident status in Canada. These unethical actions are not only morally and legally wrong, but also prejudice the

many other genuine stories of people trying to escape various forms of persecution in their home countries. If a genuine refugee is refused simply because the adjudicator has heard too many similar concocted stories, then a travesty of justice has been perpetrated against those truly deserving of Canada's protection.

There are also cases where other compelling humanitarian and compassionate considerations exist (other than risk to one's life) which could be raised in support of one's application to remain in Canada. These include factors such as strong establishment in Canada, best interests of children affected and other types of undue, undeserved and disproportionate hardship that would result from a refusal.

It used to be that a marriage or common-law relationship with a Canadian or permanent resident can almost guarantee a stay of removal and eventual grant of permanent residence to a foreign spouse who may have already lost status. However, due to the proliferation of bad faith marriages or so-called marriages of convenience, even genuine relationships are put at a great disadvantage and refused in many cases. Recently, the IRPA regulation defining "bad faith marriages" was amended to include non-genuine relationships or those which were primarily entered into for immigration purposes. The old regulation was less strict in that the marriage would have to be both non-genuine and entered into primarily for immigration purposes to be considered a bad faith marriage. Now, even if the marriage is genuine, but if it was perceived by an immigration officer to have been entered into primarily for immigration purposes, the sponsorship application can be refused and the removal against the out-of-status spouse can proceed.

Once a removal order is issued by the CBSA, there are administrative and judicial remedies that can be taken to stay the removal process. It is important to note however, that these procedures and their effectiveness would depend on the specific circumstances in each case, as well as the favorable (or unfavorable) perspectives of the decision-makers.

Thus, the removal process does not simply mean that once a person loses status in Canada, he or she is immediately arrested by the authorities, detained and thrown on the next flight to the home country. There are various criteria, legal processes and principles involved which could result in varying treatments and outcomes.

As always, the above are meant for legal information purposes only and not intended to provide specific legal advice. If you are faced with an imminent prospect of removal from Canada, it will be best to discuss your legal options, the factors, implications and costs involved, with a trusted immigration legal advisor.

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