

## **"Reformed Caregiver Program"**

On 31 October 2014, Citizenship and Immigration Minister Chris Alexander officially announced the changes to the Live-in Caregiver Program (LCP) that will be launched on 30 November 2014. A few days later, he guested at a Filipino radio program in Toronto called *Pinoy Dreams* to answer related questions and clarify the changes.

From these media releases, it appears that the changes to the LCP consist of the following:

1. The live-in requirement will become optional. Employers of live-in caregivers will need to pay higher wages and cannot anymore deduct the cost of room and board from the caregivers' wages.
2. There will be two possible pathways for permanent residence for caregivers: the Caring for Children Pathway and the Caring for People with High Medical Needs Pathway (elderly and disabled).
3. There are new language (at least CLB 5) and education requirements (equivalent to one-year Canadian postsecondary level) for obtaining permanent residence in addition to the 24 months of full time work within four years of arrival, in either of the two pathways.
4. There will be a quota of 2,750 principal applicants to be admitted each year for each pathway (for a yearly total of 5,500).
5. The processing time for permanent residence applications under these caregiver pathways will be six months.

At first glance, these changes sound very positive and will hopefully benefit not just caregivers, but also their employers and Canada as a whole. Minister Alexander's responses to questions at his radio guesting also helped clarify many aspects of these changes. It is also good to hear him validate what advocates have long been asserting amidst allegations that caregivers are abusing the LCP. He did so by stating that, while he is aware that "there are some caregivers who abuse the program, there are many more employers who are abusing the caregivers." Thus, he assured that the main objectives of the government's most recent reforms include: "faster processing, enhanced career opportunities for caregivers, less separation from families and more protection for caregivers."

However, several more questions remain unanswered as the future of caregivers and their families remain quite uncertain. As of this writing, CIC has only released a summary of the changes but not the specific operational guidelines. Once these guidelines are released, I will be happy to share them in future articles.

### *Optional Live-in Condition*

In a properly monitored and balanced employment situation, the removal of the live-in requirement is a welcome change that can truly help reduce the vulnerability of the caregivers. This will not only help regulate the number of hours that a caregiver will be required to work but will also make it easier to delineate regular from overtime hours and their corresponding wage rates. It will hopefully create a healthier and more humane work environment instead of perpetuating a system that had been likened to "modern day slavery".

However, it must be noted that a caregiver work permit initially requires an approved labour market impact assessment (LMIA) which can only be approved if an employer is able to prove that there is no other Canadian or permanent resident who is qualified and willing to perform the job. In the past, the justification given for the live-in requirement is that there is allegedly "no shortage of live-out caregivers in Canada." Thus, for foreign workers who are often desperate to grab any opportunity to work in Canada, it would not be surprising if many would still agree to perform live-in caregiving work if only to improve their chances of landing a job in Canada. For their part, employers would likely become hesitant to shell out the \$1,000 LMIA processing

fee (in addition to the costs of recruitment, transportation, etc. as required by law) in a live-out caregiving arrangement if it will most likely be refused due to the perceived lack of labour market shortage.

Moreover, although the government has tried to increase protection for live-in caregivers by not allowing employers to deduct costs of room and board from the caregiver's wages, there is no clear guarantee that this will be strictly monitored and properly enforced. In most cases, the employers get away with non-compliance with the terms of an employment contract simply because the caregiver would rather not complain and risk delays in obtaining permanent residence upon completion of the required two years of caregiving work. Nor is there any mechanism in place to ensure that these regulations are followed and caregivers are not prejudiced by the employer's non-compliance with legal requirements or any attempts to report the same to the authorities.

With these concerns, it is highly doubtful that a live-out option will become the norm anytime soon. But having such an option is a good start.

### *Non-Retroactivity and New Quota for Caregivers Granted Permanent Residence*

It provides relief for caregivers who came under the LCP to hear the CIC Minister's assurance that all who came under the LCP will be processed based on the old rules. However, what causes great worry under the new program is the imposition of an annual quota of 2,750 for each pathway for a total of 5,500 a year, without a similar quota for incoming caregivers. There is reasonable fear that this imbalance will lead to many people losing status and going underground thus creating even greater vulnerability for the workers and inevitable separation from their overseas family members.

In response, Minister Alexander said at his radio interview that this 2,750 (per pathway) quota is just for 2015, for those who are already in the LCP but who may qualify under the "reformed" Caregiver Program. This, he said, is in addition to their target of processing the backlog within the next two years (approximately 30,000 PR applications each year). He added that it is up to the government to set new immigration targets/levels for subsequent years depending on the government's priorities and other relevant factors.

With these targets, it is hoped that not only will the government fulfill its goal of clearing of the current 60,000 or so backlog applications under the LCP, but that the new quotas will eventually increase in proportion to the numbers of caregivers being admitted to Canada. This is not only fair, but will also avoid an increasing number of people being led into the underground economy who will not only be subject to untrammelled abuse and exploitation, but which will also artificially downgrade the wages for Canadians and permanent residents.

As in all legislative changes, their real test lies in the actual implementation. Although we are grateful that some positive reforms have been introduced, we hope that they will be coupled with strict and proper enforcement to ensure that they are producing intended results. If these reforms prove ineffective in addressing the perennial issues plaguing the caregiver program, then we hope that the government will continue to consider the various proposals of well-meaning advocates who have seen or experienced first hand the sufferings of caregivers.

Future reforms must also properly consider and take steps to reduce the great power imbalance and economic disadvantage resulting from precarious immigration status. It would be even more ideal if Canada will lead the rest of the world in putting an end to this type of human exploitation. This can only be realized if all migrants, including caregivers, are admitted as permanent residents at the outset instead of continually being treated as "disposable" temporary workers.

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