



THE CANADIAN
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July 11, 2017

Via email: hon.ralph.goodale@canada.ca; Minister@cic.gc.ca

The Honourable Ralph Goodale, P.C., M.P.
Minister of Public Safety and Emergency
Preparedness
Public Safety and Emergency Preparedness
269 Laurier Avenue West
Ottawa, ON K1A 0P8

The Honourable Ahmed Hussen, P.C., M.P.
Minister of Immigration, Refugees and Citizenship
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Ministers:

Re: CBSA Flagpoling Pilot Project

The Immigration Law Section of the Canadian Bar Association (CBA Section) is concerned with the lengthy processing times for immigration applications at the Canada Border Services Agency (CBSA) Southern Ontario Region, as well as with the Flagpoling Pilot Project initiated on June 16, 2017. We have several suggestions for a more collaborative approach to address the excessive immigration wait times at ports of entry across Canada.

The CBA is a national association of over 36,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,000 members practicing all areas of immigration law. Our members deliver professional advice and representation in the Canadian immigration system to thousands of clients in Canada and abroad.

Many foreign nationals who are legally admitted to Canada as temporary residents make use of sections 198 and 200 of the Immigration and Refugee Protection Regulations (IRPR) by physically leaving Canada and re-entering to apply for a work permit or to confirm landing after being issued a permanent resident visa (flagpoling).

Recently, we have heard troubling accounts of applicants waiting 8 to 10 hours (or more) at the port of entry, and being denied services, redirected to apply elsewhere or to return on another day. This refusal to process a request at the port of entry is not just a negative client experience – it is a matter of public interest that is unauthorized under the Immigration and Refugee Protection Act (IRPA), which can have a significant detrimental impact on an applicant. While it is incumbent on a foreign national to satisfy an officer that they meet the requirements of the category for which they are seeking re-entry to Canada, they have a right in the regulations to be processed at a port of entry (POE).

While there have been recent improvements in scheduling inland appointments to land in Canada, it still takes several weeks, and the option of inland appointments is not widely used. This is due, in part, to a lingering perception that it still takes several months to schedule an inland appointment, but also to the frustrating experience with the call centre process, which can be a considerable deterrent for many clients.

Improved processing times at CPC Vegreville for extensions of temporary status may not dissuade flagpoling by individuals with business or personal reasons for wanting a new work permit as soon as possible. For example, an applicant may be changing employers and require a new work permit immediately, have recently graduated from a Canadian university or college and is eligible to apply for a post graduate work permit, or have applied inland for an extension or amendment which has not been approved, and needs to travel outside of Canada.

Similarly, since the introduction of Express Entry and the points system, foreign nationals seeking permanent residence are more often in Canada than abroad when their visa is issued. These applicants are also interested in landing immediately. For example, they may wish to avoid the time and cost of applying for an extension, to qualify for citizenship sooner, to take advantage of an opportunity to work for a new employer, or to attend a post-secondary institution without further authorization being required.

The CBA Section understands that the Flagpoling Pilot was introduced in the Southern Ontario Region because of high volumes and excessive immigration wait times from Friday to Monday. However, we believe that this pilot is not an effective solution. And it will have the most significant impact on temporary residents, who have been working and paying taxes in Canada.

While attending at non-peak times should mean that foreign nationals receive faster processing, there are already reports of their not being processed at non-peak times on Tuesday, Wednesday and Thursday in the Southern Ontario Region. There are also reports of officers at ports of entry outside of the Region refusing to process applications. When an officer decides to defer an examination at a POE to a weekday using IRPA section 23, the foreign national is readmitted to Canada with no status until the examination can be resumed. This can have significant and immediate consequences on an applicant's ability to work or study in Canada, and on their health insurance coverage. Applicants often flagpole on weekends for legitimate reasons, such as to avoid taking time off work or taking their children out of school.

The CBA Section supports a more collaborative approach to addressing the excessive immigration wait times at all POEs across Canada, and discourages an extension of this pilot to other POEs. Specifically, we recommend that:

1. CBSA eliminate the Flagpoling Pilot Project – it is a denial of the right to have applications processed at a POE in IRPR sections 198 and 200;
2. Immigration, Refugees and Citizenship Canada (IRCC) give foreign nationals who are temporary residents in Canada other options for landing in Canada, and access to landing interviews either in person or by phone within a week of permanent visas being issued;

3. IRCC amend the IRPR to allow foreign nationals to travel outside Canada and return to Canada while their application for extension or variance is pending without jeopardizing implied status¹;
4. IRCC continue to shorten processing times at CPC Vegreville;
5. IRCC consider using the Case Specific Enquiry Portal or an alternative online option to schedule a landing appointment, to increase efficiency and positive customer experience;
6. CBSA develop teams of officers with advanced knowledge of Canadian immigration law to deal with immigration cases at POEs more efficiently;
7. CBSA and IRCC develop a communication plan to educate the public about peak and non-peak processing times, and collaborate with the CBA Section to share this information on a monthly basis with our members; and
8. IRCC open inland offices in major urban cities to deal with in-person applications on an urgent basis, for example, in situations where a work permit is issued with an error on it (such as an incorrect date or condition of employment) and requires correction.

We trust that our comments on the CBSA Flagpoling Pilot Project will be of assistance, and would welcome the opportunity to discuss our recommendations further.

Yours truly,

(original letter signed by Vance P. E. Langford)

Vance P. E. Langford
Chair, CBA Immigration Law Section

¹ See Canadian Bar Association, Immigration Law Section, *Implied Status and Conditional Permanent Residence* (September 8, 2016), available [online](http://ow.ly/YcpU30dxQOQ) (<http://ow.ly/YcpU30dxQOQ>).