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Via email: Caroline.RiverinBeaulieu@cic.gc.ca; Fraser.Fowler@cic.gc.ca

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Dear Ms. Riverin Beaulieu and Mr. Fowler:

Re: Immigration and Refugee Protection Regulations Amendments, Canada Gazette, Part I – May 18, 2013

Introduction

The Canadian Bar Association's Immigration Law Section (CBA Section) appreciates the opportunity to comment on proposed amendments to the *Immigration and Refugee Protection Regulations* narrowing the definition of dependent child by reducing the age limit to 18 and removing the exception for full-time students, as well as changing the Minimum Necessary Income (MNI) requirements for sponsors of parents and grandparents. The CBA is a national association of over 37,000 lawyers, notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. The CBA Section comprises lawyers whose practices embrace all aspects of immigration and refugee law.

Canada has ratified international human rights conventions which speak to the protection of children and the integrity of the family.¹ The UN Human Rights Committee has indicated that 'family' is to be read broadly, including persons normally considered to be members of the

¹ See for example, *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, Art. 17 (protection of family from arbitrary or unlawful interference); Art. 23 (recognition of the family as the natural and fundamental group unit of society, entitled to protection by society and the State).

immediate family in accordance with social and cultural norms and actual past practice.² Section 3(3)(d) and (f) of the *Immigration and Refugee Protection Act* mandate its application in accordance with Canada's human rights obligations, in this context, protecting the integrity of the family, which should inform the actual drafting of its associated regulations and policies.

For the proposed changes on age of dependency, the CBA Section recommends that the government engage in further consultation before proceeding, due to the lack of meaningful engagement with the public and stakeholders on this regulatory change. We recommend that the proposed changes to the MNI for sponsors of parents and grandparents be reconsidered in light of the negative impact on prospective immigrants who are employed in the trades or are small business owners, and their potential to widen the economic disparity between wealthy and other sponsors.

I. Proposed Regulatory Changes to Age of Dependency

In many societies throughout the world, and indeed in many families throughout Canada, children remain dependent on their parents while studying and often until marriage. Amending the regulations to institute an age-18 "cut off" appears to be culturally insensitive and does not reflect current realities of the family. Specifics on the adequacy of the consultation and the questions raised by lowering the age of accepted dependants are set out below.

Public Consultations

The Regulatory Impact Analysis Statement accompanying the proposed regulation confirms the importance of dependent children in the overall immigration program, noting that "dependent children represent 30% of the overall immigrants admitted annually to Canada."³ We commend the government for its spring 2012 consultations (two in-person meetings and an online survey) on the Parent and Grandparent Immigration Program that provided an opportunity for comment on the proposed redefinition of dependant for that immigration class.

There were no consultations with the public or stakeholders on the impact of the proposed definition on all immigrants affected across all permanent residence categories, and their Canadian families. This has left many unanswered questions. CBA Section members have asked the following serious questions arising out of the RIAS and this proposed regulatory amendment.

Economic Outcomes

By age 30, dependants that arrived at ages 15 to 18 earn roughly 20% more than dependants that arrived at ages 19 to 21.

Additionally, the expanded eligibility for full-time students can allow those who are well into their late 20s or even 30s to come to Canada as dependent children, despite weaker integration, and weaker long-term economic performance outcomes. ... Based on 2012 statistics, dependants under the age of

² See, for example: *Human Rights Committee, General Comment 16*, Art. 17 (23rd session, 1988), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 21 (1994), at para. 5; *General Comment 19*, Art. 23 (39th session, 1990), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 28 (1994), at para. 1-2; *Jama Warsame v. Canada*, Communication No. 1959/2010, U.N. Doc. CCPR/C/102/D/1959/2010 (2011). At para. 8.7-9

³ "Regulations Amending the Immigration and Refugee Protection Regulations," *Canada Gazette, Part I*, May 18, 2013 [the RIAS], online: <http://www.gazette.gc.ca/rp-pr/p1/2013/2013-05-18/html/reg1-eng.html>. All of the quotations in italics below are derived from the RIAS.

19 constituted 90% (64 757) of all sponsored children, while those aged 19 and older were 10% (7 237).

Numerous questions remain about how older dependent children's economic outcomes compare. For example:

- How do older dependants' earnings compare to the average Canadian's income for the same age?
- Are older dependants' earnings greater than the Low Income Cut-Off levels?
- Why do older dependants earn 20% less? Is there a variable other than age that accounts for this? If yes, would the economic objective be achieved by controlling for that narrower causative factor?
- How does the economic analysis change when consideration is given to the potential loss to Canada of high economic outcome principal applicants and younger dependants who refuse to immigrate because they would be forced to abandon a dependent family member?
- What percentage of dependants are in their late 20s and 30s? If a substantial number of these dependants have demonstrably poor (as opposed to simply lower) outcomes, then can the economic objective be better achieved by controlling for a higher age limit to exclude this much older group?

Processing Efficiency

...the current allowance for older dependent children who are pursuing full-time studies to accompany principal applicants creates significant challenges and inefficiencies in processing applications. ... Fraud in the immigration context in school attendance documents is prevalent in some countries, and verification of attendance and enrolment is labour-intensive.

- There is no distinction here for dependent children studying in Canada versus those studying outside Canada. Would the suggested inefficiencies still apply to older children whose attendance at Canadian institutions is easily verifiable?
- Will there be an increase in humanitarian and compassionate applications, and applications under s.117(1)(g) of the Regulations to address situations of hardship created by the new definition, for example for children who are not able to leave their home countries before age 19 due to mandatory military service?

Transitional Provisions

In some cases, such as for live-in caregivers, refugees and persons selected under a public policy, the road to permanent residence involves many steps, as applicants would have initiated their immigration process years before being in a position to submit an application for permanent residence. For these groups of applicants, there would have been an assumption that the same definition of dependent child would apply throughout the entire process, with the expectation that the applicants would be able to bring their dependants to Canada upon completion of the permanent residency process. Given the processing specificity for these groups of applicants, the existing definition of dependent child would continue to apply to these applicants.

- Some foreign national parents are now working or studying in Canada on the assumption they can include on their skilled worker permanent resident application (particularly in the Provincial Nominee Class, Canadian Experience Class, and Federal Skilled Worker Class) their in-Canada or overseas older dependants. Can the government meet the expectation it created when these skilled workers began studying and working in Canada?

- Because refugees often require time to save sufficient funds to pay the costs associated with their dependants' immigration (e.g., processing fees, medical examinations, airfare, and other costs), the government provides additional time for them to submit permanent residence applications. Can the government meet the expectation it induces when refugees are given the assistance of additional time only to find that time has negated the opportunity to bring their older dependants to Canada?

Necessity

The government relies on statistics that mostly pre-date the completed processing of applications subject to extensive recent and anticipated changes to all immigration categories, including:

1. Point deductions for over 36-year-old applicants in the Federal Skilled Worker Class (without arranged employment). It is rare that persons under 36 years will have older dependants.
2. The growing temporary-to-permanent residence path in which applicants are likely to be younger, especially if they are studying or working under the International Experience Canada that is restricted to typically 30 or 35 years of age.
3. Language testing of Provincial Nominees in NOC C and D occupations.
4. Redesign of the Federal Business Classes.

Therefore:

- Can the government rely on research and statistics from an immigration system before widespread changes have been sufficiently realized to produce reliable older dependant outcome statistics?
- Will exclusion of older dependants disproportionately affect provincial and federal business programs in which principal applicants are often old enough to have older dependants?
- Will exclusion of older dependants also disproportionately affect provincial applicants because age lock-in will only occur upon submission of the permanent residence application, after a sometimes unexpectedly long PNP processing time?
- Will recent changes result in a decrease to the number of older dependants without redefining dependants?

International Law

In light of Canada's international obligation to protect the family unit and to consider social and cultural norms and actual past practice in deciding who forms a "family":

- Will Canada continue to meet its international obligations by forcing immigrants to leave these children behind, possibly to live by themselves without any other family?

Gender Impact

- Is Canada inadvertently discouraging families from immigrating if they are from cultures and legal systems wherein unmarried daughters face barriers and prohibitions on independence?

Best Interests of the Child

*Baker v. Canada (M.C.I.)*⁴ established the importance of immigration decision-makers considering the best interests of a child affected by the decision. Subsequently, the Federal Court extended the best interests of the child analysis to adult children in circumstances wherein dependency was ongoing, such as the dependant not having authorization to work or continue studies in Canada or being financially dependent on a parent while pursuing an education.

- Can redefining dependant in the Regulations overcome the obligation to consider the best interests of the dependent adult child, as established by the Federal Court?

Family Reunification

- Would the family reunification objectives of IRPA, especially in the context of the Family Class, be better realized by at least allowing older dependants to immigrate in instances where they will be the only family member (or nearly the only family member) left behind?

Objectives

The primary objective of the proposed amendments is to enhance economic integration of immigrant dependent children to increase Canada's economic potential.

The objectives of Canadian immigration are listed in IRPA s.3. In addition to economic objectives, they include enhancing the social and cultural fabric of Canadian society, development of minority official language communities, family reunification, promoting successful integration, and provincial interests. Canada has also made extensive commitments to human rights, and advancing those commitments is a further objective that must equally be taken into consideration, along with both the family reunification and economic development objectives of the Act.

- Would redefining dependants hinder the achievement of these other objectives and unjustifiably prioritize economic objectives?

II. Proposed Changes to the Income Requirements for Sponsors of Parents and Grandparents

Several changes have been proposed to the income requirements for sponsors of parents and grandparents, including increasing the MNI by 30%, and extending the MNI calculation period to three years, verified by CRA Notices of Assessment. The CBA Section is concerned that these changes will increasingly limit the sponsorship of parents and grandparents to the wealthy.

With the expansion of immigration in the trades under the Federal Skilled Trades Program and numerous provincial programs, increasing numbers of immigrants in medium-income jobs may no longer be able to sponsor their family members. Prospective immigrants will have to choose between facing forced permanent separation from parents and grandparents, and not immigrating to Canada.

Parents and grandparents frequently play an undervalued economic role in providing child care, working in family businesses, and providing capital to adult children wishing to start or purchase businesses or real estate. In addition, assets (whether owned by the sponsor or by the parents or grandparents themselves) continue to be excluded from the MNI assessment. These assets can provide ongoing financial support to family class immigrants. Limiting sponsorship to the wealthy may further exacerbate the economic disparity between rich and other potential sponsors.

⁴ [1999] 2 S.C.R. 817.

Conclusion

The ability to bring children and parents is a significant factor for many prospective immigrants in choosing whether or not to immigrate to Canada. Losing this ability may discourage many otherwise qualified and highly desirable immigrants as they will be unwilling to risk permanent separation from close family members. It may also cause economic disruption to Canadian employers where families currently working in Canada choose to leave rather than be separated from young adult children. The redefinition of dependant will affect more than the older dependants. It will affect entire families seeking permanent residence in all categories, Canadian relatives, and Canada as a whole.

With the proposed regulation concerning the age of dependency, the CBA Section has raised a number of questions on economic outcomes, efficiency, transitional provisions, necessity, international law, gender issues, the best interests of the child, family reunification, and the legislative objectives of immigration. These issues do not appear to have been addressed adequately in the 2012 consultations. The CBA Section strongly encourages the government to conduct broad consultations with the public and stakeholders to an extent commensurate with the potentially significant effects of redefining the family class.

Yours truly,

(original signed by Kerri Froc for Kevin Zemp)

Kevin Zemp
Chair, National Immigration Law Section