Applying for Permanent Residence on Humanitarian and Compassionate Grounds: Five Practice Tips

Section 25 of the Immigration and Refugee Protection Act is at the centre of an extremely fertile and dynamic area of immigration practice. With sufficient “humanitarian and compassionate” (H&C) grounds, immigration and visa officers have discretion to exempt applicants from any requirement of the Act, enabling applicants to be landed in spite of an inadmissibility or ineligibility for permanent residence. In making a successful H&C application for landing, immigration practitioners are called upon to mobilize their most compelling arguments to demonstrate that their clients will face unusual, undeserved and disproportionate hardship if denied landing in Canada.

The purpose of this paper is to outline five strategies that I employ to advocate for my clients on H&C grounds, with case studies from my practice.

**Tip #1: Using H&C arguments “in the alternative”**

In cases where I am unclear whether my client might be found inadmissible or ineligible for permanent residence, I routinely argue against the inadmissibility, but also include H&C submissions “in the alternative” in case the immigration or visa officer rejects my admissibility/eligibility arguments.

It should be noted that, where H&C submissions are used to supplement an application for landing in the Spouse/Common-Law Partner in Canada class, Operational Bulletin 126 (OB126) sets out specific processing guidelines. If the applicant is being sponsored by and cohabits with a spouse or common-law partner in Canada (per s.124(a) and (c) of the Regulations), the application will be processed in the Spouse/Common Law Partner in Canada class, and the applicant will be entitled to numerous benefits if the H&C exemption is granted, as follows:

a) they will be entitled to request concurrent processing of overseas dependents,
b) they will be exempted from the minimum necessary income requirement (s.133(4) of the Regulations), and
c) they need not meet medical requirements with respect to excessive demand on health and social services (per s.38(2) of the Act).

By contrast, if the applicant does not satisfy the requirements of R124(a) and (c), OB126 directs immigration officers to transfer the application to the H&C queue, following which the application will not be processed in the Spouse/Common-Law Partner in Canada class and the exceptions outlined above will not apply.

**Case Study #1:** Ms. M retained my services when she received a fairness letter from CIC alleging that her application for permanent residence might have to be rejected due to her 17 yr old daughter’s alleged medical inadmissibility. It was CIC’s contention that Ms. M’s daughter (who receives special education due to developmental delay) would impose excess demand on health and social services if granted landing in Canada.
After reviewing the daughter’s medical documentation, I was unclear whether we would be able to disprove the allegation of medical inadmissibility. In my reply to the fairness letter, I argued that Ms. M’s daughter was not medically inadmissible, with evidence that she would not impose excess demands on Canada’s health and social services following her arrival in Canada. Knowing that Ms. M’s application would be refused pursuant to s.42 of the Act if we were unsuccessful in disproving the allegation of medical inadmissibility, I sought (in the alternative) an exemption on Ms. M’s behalf from s.42 of the Act, with evidence of the unusual, undeserved and disproportionate hardship that Ms. M and her family would face if the application were to be refused.

Attached at Appendix A is a copy of my reply to the fairness letter sent to Ms. M, including the H&C submissions.

Approximately six months after receiving our reply to the fairness letter, CIC dropped the inadmissibility allegations against Ms. M, upgrading the child to M3 from M5 (a copy of CIC’s letter is also attached at Appendix A). Ms. M and her family have all granted been landed in the live-in caregiver class.

**Tip #2: It is never too late to request H&C consideration**

While CIC publishes an application intended specifically for those seeking landing on H&C grounds (IMM-5001), it has been my experience that it is never too late to request H&C consideration, even if the client applied for landing, for example, on a family class application form.

One opportune time to send H&C submissions arises when the client receives a fairness letter from CIC alleging that he or she may be inadmissible or ineligible for landing.

**Case Study #2: Ms. T applied for permanent residence in the live-in caregiver class, omitting the name of her youngest son on the application for landing. While processing that application, Citizenship and Immigration Canada (CIC) discovered that Ms. T had not disclosed all her family members, and sent a letter asking her to “make submissions”.

Anticipating that CIC might refuse Ms. T’s application for permanent residence because of her misrepresentation, we wrote to provide full details about her family composition, and requested an exemption on H&C grounds from s.40 of the Act. The H&C exemption was granted approximately six months later.

Attached at Appendix B is a copy of CIC’s fairness letter that Ms. T received, as well as the H&C request and supplementary affidavit that we sent on her behalf.

**Tip #3: Clearly identify the exemption(s) you are seeking**

Inland Processing Manual 5 (section 5.8) states that CIC officers assessing inland H&C applications must consider exempting any applicable criteria or obligation of the Act, including inadmissibilities, when the foreign national has specifically requested such an
exemption or when it is clear from the material that the foreign national is seeking such an exemption. Although the officer may grant an exemption of his/her own initiative, it is the responsibility of the applicant to identify any known inadmissibilities and to provide cogent reasons why the officer should grant the exemption(s).

Bill C-50 amended s.25 of the Act as it relates to overseas applications for permanent residence made on H&C grounds. Prior to C-50, s.25 mandated that the Minister shall consider a request for H&C consideration made by any foreign national. Post C-50, the statute states that the Minister may consider the request for H&C consideration by an applicant outside of Canada. Ministerial Instructions further stipulate that H&C considerations within the Federal Skilled Worker class will only be considered if the applicant is eligible for processing at a visa office. In effect, the instructions prevent the use of requests for H&C considerations to overcome the eligibility requirements for processing under the FSW class (see Overseas Processing Manual 6 for further discussion). At the time of writing, it is still unclear whether and in what circumstances visa officers abroad will exercise their discretion to grant an H&C exemption to an applicant outside Canada.

**Case Study #3:** Ms. B entered Canada in the Live-in Caregiver Program. Although Ms. B completed 24 months of authorized employment following her admission to Canada, she applied for landing on H&C grounds, rather than in the live-in caregiver class, because she had a young child living abroad with Down’s Syndrome who was likely to be found medically inadmissible to Canada.

Attached at Appendix C is the H&C submission that we sent on Ms. B’s behalf, in which we sought an exemption from s.42 (inadmissible family member) of the Act.

Approximately thirteen months after Ms. B filed her H&C application for landing, she was granted approval in principle for permanent residence. Once landed, Ms. B will have the option to sponsor her family in the family class, at which point her dependents will not need to meet medical requirements with respect to excessive demand on health and social services (per s.38(2) of the Act).

**Tip #4: Provide strong documentary support for all H&C submissions**

An applicant for permanent residence bears the burden of proving that he or she will face unusual, undeserved or disproportionate hardship if denied landing in Canada *(Owusu v. MCI, 2004 FCA 38)*. It is essential to provide clear and cogent evidence to support all allegations contained in the H&C submissions, including evidence that refusal of the application will adversely impact a child directly affected by the application.

At section 5.5 of Inland Processing Manual 5, CIC outlines some of the many H&C factors that may be used to support a request for s.25 exemption:

- establishment in Canada;
- ties to Canada;
the best interests of any children affected by their application;
> factors in their country of origin (this includes but is not limited to: economic opportunities or climate in cases of medical conditions);
> health considerations;
> family violence considerations;
> consequences of the separation of relatives;
> inability to leave Canada has led to establishment; and
> any other factor they wish to have considered.

**Case Study #4:** Ms. A entered Canada as a live-in caregiver, without disclosing to CIC that: a) she lived abroad on a false passport for several years before seeking admission to the Live-in Caregiver Program; b) that she was charged with a criminal offence while living overseas; c) that she was detained and deported back to the Philippines several years before seeking temporary admission to Canada.

Attached at Appendix D is the H&C submission that we sent on Ms. A’s behalf. Ms. A was granted landing on H&C grounds approximately 12 months after making her application.

**Tip #5: Supplement your H&C submission if material circumstances change, or if a new inadmissibility/inelegibility arises during processing of the application**

Processing of H&C applications for landing can be extremely lengthy. As such, it is not uncommon for material circumstances to change in the intervening period. For example, the birth of a child in Canada may give rise to new H&C arguments. On the other end of the spectrum, new inadmissibilities could arise that will require an additional H&C exemption, as in the case of an applicant who is diagnosed with a serious medical condition during processing of his or her application for landing.

While immigration officers have discretion to grant an H&C exemption on their own initiative, it would be extremely imprudent to expect that the officer will request additional information, or exempt newly-identified inadmissibilities, before rendering a final decision. And once the application is refused, Federal Court is unlikely to allow a judicial review application where the applicant has not put all the evidence to support his or her case before the officer prior to the refusal (Sagesse v. MCI 2009 FC 89).

**Case Study #5:** Mrs. S omitted the name of her husband on her application for permanent residence because she honestly believed that their “secret marriage” was not properly solemnized in the Philippines. In our initial submissions, we argued against the allegation of inadmissibility for misrepresentation, but also argued in the alternative that Ms. S should be exempted from s.40 of the Act on H&C grounds.

After a processing delay that spanned approximately 16 months, CIC determined that Ms. S was inadmissible for misrepresentation, however she granted approval-in-principle for permanent residence based on H&C grounds.
During the second-stage processing of her application for landing, Mrs. S developed cancer. At the time of her diagnosis, it was unclear whether she might be found medically inadmissible. However, we wrote to CIC to provide information about the recent diagnosis, and to request (if necessary) an H&C exemption from s.38 of the Act.

Attached at Appendix E are the H&C submissions that we sent on Ms. S’s behalf.
26 June 2008

Citizenship and Immigration Canada
Case Processing Centre
Vegreville AB T9C 1W3

To Whom It May Concern:

Re: Client # , Date of Birth: , Philippines
Application for Permanent Residence on Humanitarian and Compassionate Grounds

I am writing on behalf of my client, Ms. in reply to your letter dated 20 February 2008 (the “Fairness Letter”). The purpose of my letter is to address your finding that is inadmissible to Canada on health grounds. We take the position that is not inadmissible to Canada or that, in the alternative, Mrs. should be granted landing in Canada because of the Humanitarian and Compassionate (H&C) Grounds we shall enumerate in this letter.

Family Background

Mrs. is a citizen of the Philippines who came to Canada in the Live-In Caregiver Program (LCP) on 29 April 2003, in search of the stable income she needed to support her large family. When Mrs. came to Canada, she left behind her husband and seven dependent children. For the past five years, Mrs. has supported her family through remittances to the Philippines, enabling her children to continue their education, and maintain a higher standard of living.

At present, Mrs. has four children enrolled in university or in full-time vocational education courses: is 22-years old and pursuing a course in legal management; is 20-years old and studying toward a Bachelor in Psychology; is 19-years old and studying nursing, and is 18-years old and studying Computer Management. Mrs. two youngest children, and (ages eight and six,
respectively) are both enrolled in elementary school. Finally,  is currently 16 years old, and enrolled in a vocational school for children with special needs.

**Request for Landing in the Live-in Caregiver Class:**

> **Excess Demand:**

Our primary argument is that (“”) will not impose an “Excess demand on social services”, within the meaning of the IRPA and Regulations.

The starting point for the excess demand analysis is the originating opinion rendered by Dr. on 19 December 2007, following which Mrs. was advised by Officer that her daughter will require “special education throughout her teenage years, and ultimately vocational training”. Although Officer’s letter goes on to enumerate the particular skills that will likely acquire through this special education and training, the only services identified are “parent/care giver [sic] relief programs and respite care”.

Before Mrs. came to Canada, her daughter was enrolled in a “regular” public school class with other children her age. She received specialized education from her mother on a one-to-one basis at home, since her mother has unique concern for her daughter’s well-being, and has more than 20 years of training and work experience as a teacher.

In April 2003, Mrs. was forced to migrate to Canada because of the economic situation in the Philippines was no longer able to cope in the regular school system without the special tutelage she was receiving at home. As a result, she went into a special education program in her community in During a vacation in the Philippines in April 2007, Mrs. went to visit the school that was attending. From that time, went to live with Mrs. ’s sister-in-law in where she has access to better (though private) education facilities at the “Help Learning Centre”. From the beginning, Mrs. has either cared for her daughter privately, or paid independently for her daughter’s special education needs.

is approaching her 17th birthday. As such, it cannot be said that she will require special education “throughout her teenage years”. In actual fact, virtually all (if not the entirety) of ’s teenage years are behind. will no longer be eligible for enrolment in the public education system, or at least will have a very limited period of enrolment (less than a year) in the Canadian high school system before she reaches the age of 18.

Similarly, will have “outgrown” most of the publicly-funded services that have been identified as potentially available to as a permanent resident of Canada.
Our research indicates that the caregiver relief programs and respite care benefits identified as potentially available to are generally funded in British Columbia for children enrolled for “At Home Program Benefits”. However (as shown at Exhibit “A”), respite benefits are terminated when the child reaches age 18. Moreover, to be eligible, the child must be dependent with respect to washing, toileting, feeding and dressing, none of which are issues for who is capable of performing all of these functions without assistance. If the Department takes a different approach, we ask to be provided with the evidence being relied upon by Dr. to support his position that will have access to respite benefits.

It should be noted that Dr. has not identified any impediment with respect to daily living skills. On this basis, we deny that would be eligible for any of the benefits identified, even if she were to enter British Columbia at or before age 17.

In light of the fact that would be eligible for special education for a maximum of one year, we submit that Dr.’s opinion must be revisited – specifically the assessment that will require special education “throughout her teenage years”. According to the case of Masood v. MCI, 2003 FC 1411, “where the medical officer’s report includes a patently unreasonable error ... then the visa officer’s reliance on that report constitutes an error in law”.

It is well established from the Heo decision that “the test for exclusion on medical grounds according to the Act is not simply that a person has a disease, disorder or disability. The statutory language requires a finding that such condition will likely cause excessive demands upon health or social services in Canada”. This leads to our final argument on the excess demand issue, which is that, to exclude Mrs. as inadmissible because of her daughter’s alleged s.38 inadmissibility, Citizenship and Immigration Canada must present a reasonable case that my client will actually avail of the services that are provided in Canada, and not just that public services exist. We take the position that Officer has not presented a reasonable case.

We do not deny that there may be some publicly funded services available to if she is admitted to Canada as a member of the live-in caregiver class. However, there have always been services available to Mrs. over her last five years as a temporary resident in Canada. Mrs. could have applied for income assistance, premium health coverage (MSP), public legal aid, or subsidized housing. But it is essential to consider that Mrs. has never availed of any of these services. By contrast, Mrs. has elected to be self-sufficient in spite of the fact that when she came to Canada, she was facing extreme financial hardship; she was employed at a
minimum-wage job for more than two years (and was prohibited from taking extra part-time work); she has been supporting , plus her husband and six other children without any government assistance for the last five years.

Dr. has not anticipated that will require expensive medical coverage, which would necessarily be covered publicly, but rather that there is a mere possibility that Mrs. will elect to apply for certain resources that could be partially subsidized with government resources. No analysis has been provided to establish that Mrs. might reasonably be expected to avail of these voluntary services.

Given all the facts of her case, we take the position that there are no reasonable grounds to indicate that Mrs. or her family will cause an excess demand. Indeed, since her arrival in Canada, Mrs. has always displayed a tenacious work ethic, a capacity to raise funds through private donations and family, and a willingness and ability to steadily increase her earnings through authorized employment.

In the following sections, we have detailed all the factors which demonstrate that Mrs. has both the willingness and the capacity to provide for her daughter, without recourse to public resources. We take the position that this evidence more than rebuts any potential argument that Mrs. and her family will impose excess demand on Canada’s social services. In light of these facts, we seek landing for Mrs. ’s family in the live-in caregiver class.

Work and Education Background (Outside Canada)

Mrs. began her post-secondary education in 1977 at the Agricultural College, where she completed a four year Bachelor of Science in Agricultural Education. At the time, Mrs. did not have a range of options, because the Agricultural College was the only school her parents could afford.

Following her graduation, Mrs. immediately began working as a substitute teacher, and then transferred into a full-time position as soon as she became board certified in 1981. For four years following her graduation, Mrs. taught elementary agriculture – basic planting methods – to the children in her local farming community. But over that four year period, Mrs. was trained to teach English, Math and Science, and eventually became a full curriculum elementary teacher, accumulating 18 years of employment experience in this field.

Mrs. married her husband in 1984. Approximately three years later, her husband entered the public service as a Barangay Councillor. Thereafter, Mr. served a nine year term as Municipal Counsellor.
During the period of her husband’s public service, Mr. and Mrs. were able to support themselves and their growing family on the double income they were earning. But when the political tide shifted and Mr. was unable to obtain re-election or other employment in the public service, he took up employment as a small-time farmer, and the family fell on hard financial times. At this point, it became essential for Mrs. to find work abroad to support her children’s education needs. Mrs. made a decision to come to Canada, where she knew that she would have an opportunity to reunite her family on completion of the work requirements in the LCP.

Since he left public service, Mr.’s only income in the Philippines has come from the farm that Mr. owns and operates. Unfortunately, the region has been battered by difficult weather – continuous rains, flooding and typhoons. In mid 2004, was subject to extreme weather conditions, causing severe damage to the farmland. As stated in Mr.’s support letter, which is attached at Exhibit “B”, government relief efforts covered only the cost of a new tractor, as well as some seedlings and fertilizers, but Mr. was forced to take a private loan to help him cover the extensive maintenance costs.

Attached at Exhibit “C” is a letter from the Office of the Municipal Agriculturist, which estimates that the total damage to the ’s land was in the range of P50,650 following the typhoons in 2004.

To confirm Mr.’s account of repeated typhoons in the region of, we have attached at Exhibit “D” a report from the Department Of National Defense, which states that the region of was declared under a “State of Calamity” in June 2004, after Typhoon “Dindo”. Unfortunately, the hardship did not end in 2004. Indeed, the region of was hit very badly by the recent typhoon Fengshen, which struck just last week. Attached at Exhibit “E” is an article from ABS-CBN News indicating that the typhoon caused a Level 2 warning in the area this June 2008.

The family have not seriously considered relocating for the following reasons: first, much of the Philippines is experiencing extremely inclement weather, therefore Mr. would likely have a very difficult time sustaining a farm in any region, particularly an unfamiliar region where he has no connections. Moreover, the region where their farm is situated is extremely underdeveloped – no electricity, poor transportation and a very primitive sanitation system (no
running water or flush toilets), therefore the value of the property would be extremely low and would not allow them to purchase property in a more financially viable area.

- **Work History in Canada**

  Immediately after she arrived in Canada on 29 April 2003, Mrs. took up employment in Vancouver with the family of Mrs. worked for more than three years as a full-time live-in caregiver in the childcare field. She applied for permanent residence in October 2005, and was granted approval-in-principle for permanent residence in or about June 2006. After she received her open work permit, Mrs. took immediate steps to increase her earnings so that she could help to improve her family’s living conditions in the Philippines.

  At first, Mrs. took up two part-time jobs, at and . At Mrs. worked as a retail salesperson, 40 hours at first. In the evenings, Mrs. went to Hospital, where she works as housekeeping staff in the employ of . In total, Mrs. worked 52 hours every week.

  Since April 2007, Mrs. found yet another job, at where she works approximately 20 hours as a Laundry Worker. Mrs. has since reduced her weekly hours at to 36 hours per week, bringing her total weekly work schedule to 68 hours per week. Although the work schedule is gruelling, Mrs. has increased her earnings by four times in just two years since she obtained an open employment authorization.

  Attached please find job references from Mrs.’s current employers, at and (Exhibits “F”, “G” and “H”, respectively). Also attached, at Exhibit “I”, is a “petition” from Mrs.’s co-workers at . As you can see, Mrs. is a highly loved, valued and dedicated employee and co-worker. Mrs. (the employer at ) has stated in her letter that she has experienced serious difficulty attracting and retaining competent and capable employees like Mrs.

  A copy of Mrs.’s 2007 income tax return is attached at Exhibit “J”.

**Alternative Argument: Landing on H&C Grounds (s.25 IRPA)**

- **Jurisdiction to Consider H&C Arguments:**

  If you maintain that is medically inadmissible to Canada, which we specifically deny, we ask that Mrs. be exempted from s.42 of the IRPA pursuant to s.25 of IRPA. Although Mrs.’s application was submitted in the live-in caregiver class, it is
clear from the wording of s.25 that an officer has a duty to consider H&C arguments when requested:

25. (1) The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister’s own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.

[emphasis added]

On 7 June 2006, Citizenship and Immigration Canada (CIC) released the Operational Bulletin 021, which contains instructions regarding the examination of H&C Applications in Canada. The first paragraph of the OB 021 reads as follows:

CIC officers assessing applications for humanitarian and compassionate (H&C) consideration must consider exempting any applicable criteria or obligation of the Act, including inadmissibilities, when the foreign national has specifically requested such an exemption, or it is clear from the material that the foreign national is seeking such an exemption.

According to OB21, immigration officers have the delegated authority to grant an exemption from certain criteria or obligations of the IRPA and Regulations, including where the applicant has an inadmissible family member pursuant to s.42. We ask that this exemption be granted to Mrs. based on the H&C factors enumerated below.

Establishment in Canada

Almost five years after her arrival in Canada, Mrs. was notified that “might reasonably be expected to cause excessive demand on social services”, and that Mrs. may therefore be inadmissible to Canada pursuant to s.38(1)(c) of the Immigration and Refugee Protection Act.

Before she received the Fairness Letter, Mrs. had no idea that a person could be denied landing in Canada because of an intellectual disability. Her understanding was that the medical screening conducted by Citizenship and Immigration Canada was to ascertain whether newcomers had a disease that would put the Canadian public at a health or security risk. As such, the news that she might be denied landing after all the time, sacrifice and commitment she has made over the last five years has been devastating. Mrs. had a genuine belief that her family would soon be reunited in the country she has made her home for more than five years.

According to Mr. letter (see Exhibit “B”), my client’s family was given good reason to believe that would not be found inadmissible to Canada. Mr. asserts that the doctor who conducted second medical examination gave his assurance that should not be precluded from Canada. Mr. asserts that the doctor told him that his report
was for the family’s future reference, and would benefit them when they arrive in Canada. We submit that the Designated Medical Practitioner’s assurance breached natural justice, and gave the family a legitimate expectation that the application for landing would be approved.

Mrs. has already taken steps to upgrade her credentials in Canada. In spite of her demanding work schedule, Mrs. has been working toward completion of a two-year Teacher’s Aide Certification at (by correspondence). Mrs. anticipates that she will complete the course by April 2009, at which point she hopes to re-enter the teaching profession on a full-time basis.

In addition to her substantial establishment in the workforce, Mrs. has family ties and close friends in Canada. These ties will help her family settle as permanent residents. Since she arrived in Canada, Mrs. has lived with her sister, during weekends and holidays while she was still employed as a live-in caregiver, and full-time since she received her open work permit. ’s letter of support is attached at Exhibit “K”. Mrs. has also maintained a close relationship with her husband’s cousin, whose letter of support is attached at Exhibit “L”. Finally, Mrs. has numerous close friends who have immigrated to Canada from such as (Exhibit “M”).

Mrs. also manages to make time for her church and community. Specifically, Mrs. has been an active member of the “ since her arrival in Canada, having completed a nine-week “program” shortly after her entry to Canada. Mrs. and her colleagues meet several times per week for bible study and prayer groups, first Friday mass and Sunday mass. They also participate in fundraising activities such as the walk to raise funds for housing and education projects.

Mrs. describes her fellow participants in the as her “second family”. Attached at Exhibit “N” is a letter of support from the head of the group, Ms. and at Exhibit “O” is a petition signed by the individuals of the group. As stated in Ms.’s letter, the members of Mrs. congregation have donated many items to Mrs. family, in anticipation of their imminent arrival in Canada.

Best Interest of the Child

When Mrs. was working as a teacher in the Philippines, she earned approximately P11,815 net per month (P141,780 annually) as a public school teacher with more than 23 years of work experience (approximately Cdn$3245 per annum) (Exhibit “P”). Because her earnings were so low, and because of the numerous calamities in the region,
Mrs. and her husband were compelled to take frequent loans. Borrowing was encouraged (indeed it was facilitated) by her employer. In fact, the majority of Mrs.'s earnings were remitted directly to the lending institutions, leaving Mrs. with less than P2,500 per month in disposable income.

The article attached at Exhibit “Q” shows that Mrs. was earning only slightly more than the base salary for beginning teachers in the Philippines. Teaching salaries have been frozen at just P9,939 since late 2001 (just before Mrs. came to Canada). The article also confirms that, according to the Department of Labor and Employment (DoLE) says “A family of six needs P17,820 a month in order to survive. This means that there is living salary gap of P7,881.00”. Given that Mrs. and her husband are supporting seven children, including one child with special needs, Mrs.'s salary in the Philippines was wholly insufficient to support their needs.

By a significant margin, Mrs. s biggest expense in the Philippines is her children's school tuition, as follows:

- P16,848 per semester with two semesters per year, for a total of approximately P33,696 annually (Cdn$767.28) (Exhibit “R”);
- P40,361 per semester with two semesters per year, for a total of approximately P80,723 annually (Cdn$1864.21) (Exhibit “S”);
- P25,949 per semester with two semesters per year, for a total of approximately P51,900 annually (Cdn$1181.80) (Exhibit “T”);
- P15,546 per semester with two semesters per year, for a total of approximately P31,092 annually (Cdn$711.75) (Exhibit “U”);
- The price of school tuition is P33,180 per annum (Cdn$749.83) (Exhibit “V”).
- is still attending public school and has very minimal school expenses.
- must pay a one-time registration fee at the Montessori school (P1200), plus P300 per month for tuition, totalling P4200 (Cdn$96.99) per year (Exhibit “W”).

As we have shown, Mrs. is currently earning approximately Cdn$44,000 per annum in Canada, more than 13 times her annual income in the Philippines. We have attached a copy of Mrs.'s Notice of Assessment from 2007 (Exhibit “J”), as well as her employment
letters which prove her increased employment income in 2008 (Exhibits "F", "G" and "H"). We have also demonstrated that Mrs.  
faces an tuition burden of more than P230,591 per year. This is almost twice the annual income (P141,780) that Mrs.  
can expect to earn if she returns to the Philippines, and it does not even touch the other expenses that she would incur, including the cost of housing, food, health expenses, or utilities.

If Mrs.  
is denied landing in Canada, she will be unable to continue supporting her children’s education and daily needs on her income. Mrs.  
will be forced to find alternative employment as a migrant worker, and the  
will be forced to endure prolonged, if no permanent, separation from their mother.

> Doctrine of Laches

We submit that it would violate the doctrine of laches for CIC to deny Mrs.  
’s application for landing under s.38(1)(c).

It is CIC’s policy to delay examination of family members in the LCP until a caregiver has completed her work requirements under s.113 of the Regulations. What this means in the average case is that a caregiver has been living and working in Canada for more than four years before CIC comes to a first-stage finding about the admissibility of her overseas dependants. In Mrs.  
’s case, her family members were not asked to undergo medical examination when she came to Canada in 2002.

Mrs.  
worked hard to complete the LCP, applied for permanent residence in November 2006 and did not receive a response regarding her dependents until February 2008, at which time she was informed that  
might be medically inadmissible for landing.

In all the circumstances of Mrs.  
’s case, it would be contrary to the doctrine of laches and the principles of natural justice if the finding of medical inadmissibility regarding Mrs.  
? daughter were to prevent her from being admitted as a permanent resident almost six years after she entered Canada.

CIC does not examine an LCP worker’s family when the worker seeks entry to Canada on the basis that the worker enters Canada as a migrant worker, not a permanent resident. Because the LCP is a hybrid program leading directly to permanent residence, applicants in the live-in caregiver often contribute many years to the Canadian economy only to be denied family reunification because, unbeknownst to them, one of their family members is unable to pass immigration requirements.
In the case of *Ahone v Holloway* BCCA 1988 30 BCLR, the doctrine of laches was described as follows:

... Laches is established when two conditions are fulfilled:
(1) there must be unreasonable delay in the commencement or prosecution of proceedings, and
(2) in all the circumstances, the consequences of delay must render the grant of relief unreasonable or unjust

Mrs. [REDACTED] suffered prejudice because CIC delayed five years between when they admitted Mrs. [REDACTED] to the LCP and when they notified her that her family might be denied landing in the live-in caregiver class. In particular, Mrs. [REDACTED] has become significantly established in Canada (has invested in RRSPs, purchased life insurance, etc) based on the promise set out at s.113 of the *Regulations*.

CIC had the opportunity to medically examine [REDACTED] from September 2002, when Mrs. [REDACTED] sent her application to enter the LCP. But Mrs. [REDACTED] was never asked about her daughter’s health. As a result, Mrs. [REDACTED] completed all of the work requirements and received even approved-in-principle for permanent residence before. It would be unconscionable to allow this finding to stand. We submit that there is no policy justification for CIC’s delayed findings, particularly since Mrs. [REDACTED] underwent extensive screening before her application to enter Canada was accepted.

It was not sufficient that CIC advised Mrs. [REDACTED] that her dependants would have to be examined at the time she made her application for permanent residence. If it was CIC’s intention to examine and exclude inadmissible family member [REDACTED], we submit that they had an obligation to do so in a timely manner so as to avoid undue hardship. Failure to do so caused Mrs. [REDACTED] to establish herself in Canada and to develop legitimate expectations. In equity, the doctrine of laches precludes CIC from taking action against Mrs. [REDACTED], since they failed to do so in a timely way.

**Conclusion:**

We maintain that Mrs. [REDACTED] and her family are eligible for landing in the Live-in Caregiver class. We take issue with the allegation that [REDACTED] and her family will impose excess demand on Canada’s health and social services in Canada. In the alternative, we submit that there are compelling grounds to warrant an H&C approval in Mrs. [REDACTED]’s case, as follows:

- Mr. [REDACTED] has been employed continuously since she arrived in Canada and has ongoing employment in this country.
- Having lived and worked legally in Canada for more than six years, the impact of a negative decision in Mrs. [REDACTED]’s case is more onerous than in a case where an applicant has not made such significant contributions to Canada. Mrs. [REDACTED] has
maintained her legal status throughout her five year residency, and has always complied with the conditions of her stay.

- Mrs. ___ ___ will not be able to continue financing her children's education unless she continues working as a migrant worker.

- Jurisprudence confirms that a large and liberal interpretation should be used when determining cases of live-in caregivers. In particular, the decision of Jerome A.C.J. in the case of Turin v. Canada (Minister of Employment and Immigration), [1993] F.C.J. No. 1234 was recently reiterated in the case of Lim v. MCI 2005 FC 657:

  The purpose of the Program is to facilitate the attainment of permanent residence status. *It is therefore incumbent on the Department to adopt a flexible and constructive approach in its dealings with the Program's participants.* The Department's role is not to deny permanent residence status on merely technical grounds, but rather to work with, and assist the participants in reaching their goal of permanent residence status. [emphasis added]

We ask that a decision be rendered in Mrs. ___ ___'s case on an expedited basis. Mrs. ___ ___ has three children who are already in their early 20s. As such, she will be severely prejudiced if processing of this application is delayed much longer, as these children may no longer qualify as dependent children within the meaning of the IRPA and Regulations.

Please find enclosed a signed consent form authorizing you to release information about Mrs. ___ ___ to me. Please send us copies of any correspondence sent to Mrs. ___ ___ so that we can remain informed of developments in her case.

Yours truly,
WEST COAST DOMESTIC WORKERS' ASSOCIATION
Per:

Deanna L. Okun-Nachoff
Barrister and Solicitor

Encl:

Exhibit "A": Description of "At Home Benefits" Program
Exhibit "B": Letter from ___ ___ to CIC, 24 June 2008
Exhibit "C": Letter from the Office of the Municipal Agriculturalist
Exhibit "D": Report from the Department Of National Defense re. Typhoon “Dindo”
Exhibit "E": Article from ABS-CBN News re. Typhoon “Fengshen”
Exhibit "F": Letter of Reference,
Exhibit "G": Letter of Reference,
Exhibit "H": Letter of Reference,
Exhibit "I": Petition,
Exhibit "J": Notice of Assessment, 2007
Exhibit "K": Letter from ___ ___
22 October 2008

Attn: 
Citizenship and Immigration Canada
Case Processing Centre
Vegreville AB T9C 1W3

Dear : 

Re: Client # Date of Birth: , Philippines
Application for Permanent Residence on Humanitarian and Compassionate Grounds

Thank you for your telephone call and your approval of our request for extension to 24 October 2008.

I am writing to provide the signed “Declaration of Ability and Intent” which has been signed by Mrs. In addition, I wish to supplement the submissions we sent under cover letter dated 26 June 2008.

- Employment Income,

First, I wish to advise you that Mrs. has again increased her employment earnings, having increased her hours at full-time. Ms. Marollano is currently working 38.75 hours per week at , earning approximately $27,706.25 per annum, as demonstrated by the pay stub attached at Exhibit “A”. In order to accommodate her new schedule, Ms. has resigned her position at , but has continued her part-time hours at where she earns approximately $18,730.40 per annum, as demonstrated by the letter attached at Exhibit “B”.

Ms. has already completed the six month probationary period with , and is therefore eligible to receive a medical plan, dental plan and extended health coverage at the sole cost of her employer (Exhibit “C”). Attached at Exhibit “D” is a description of the extended benefits available to Ms. and her family, from the materials provided by her employer.

- Job Offers. 

In anticipation of her family’s arrival in Canada, Ms. has spoken to her employer about prospective job opportunities for her husband and three eldest children. We have attached Ms.’s letter at Exhibit “E”. It is the intention of .
and to join the workforce on a full-time basis following their arrival in Canada, to increase their family's joint income and contribute to \( p \)'s support and maintenance.

**Education Plan for**

In our previous submissions, we provided evidence that Ms. \( p \) is a teacher with more than 20 years of work experience. In addition to her training and work experience in the Philippines, Ms. \( p \) has been studying by correspondence as a teacher's aide in Canada, and expects to complete her program of studies within approximately six months.

We have attached a copy of Ms. \( p \)'s program curriculum (Exhibit "F"), which demonstrates that Ms. \( p \) will receive specific training about special education for children with disabilities. Ms. \( p \) intends to focus on this component when she undertakes the practicum component of her training.

In light of her substantial credentials and work experience as a teacher, Ms. \( p \) intends to home-school her daughter \( y \) thereby eliminating any public expense related to \( y \)'s education. As we have argued, by the time that \( y \) enters Canada, she will already be too old to enter the public education system.

**Other Financial Support Available to Ms.**

With our original submissions, we sent a letter from Ms. \( b \), in which Ms. \( b \) stated her intention to provide financial support to Ms. \( p \) and her family. We have attached a copy of Ms. \( b \)'s 2007 T4 statements at Exhibit "G", to demonstrate Ms. \( b \)'s capacity to extend financial support to Ms. \( p \) and her family, should the need arise.

**Conclusion**

We specifically deny that \( p \) will create an excess demand on Canada's health and social services in Canada. I sincerely hope that you are able to approve this application without further delay.

Sincerely,
WEST COAST DOMESTIC WORKERS' ASSOCIATION
Per:

Deanna Okun-Nachoff
Barrister & Solicitor
Declaration of Ability and Intent

In relation to my application for permanent residence, I acknowledge being informed that I may be inadmissible under section 38(1)(c) of the Immigration and Refugee Protection Act based on the following identified medical condition: Developmental Delay.

I acknowledge receiving a letter which listed all the social services required in relation to this medical condition.

I further understand that this application may be refused, unless I can provide a credible plan to an immigration officer, ensuring that I or my dependant will not impose an excessive demand on Canadian social services.

Section 38(1)(c) states:

"A foreign national is inadmissible on health grounds if their medical condition ... might reasonably be expected to cause excessive demand on health or social services."

I am providing, with this declaration, the details of the plan I intend to use in Canada.

I hereby declare that I will assume responsibility for arranging the provision of the required social services in Canada and that I am including a detailed plan of how these social services will be provided, along with appropriate financial documents that represent a true picture of my financial situation over the entire duration of the required services.

I hereby declare that I will not hold the federal or provincial/territorial authority responsible for costs associated with the provision of the social services, which I or my family member would require in Canada and which would otherwise create excessive demand on social services in Canada.

I am signing this declaration of my own volition, not due to force or the influence of any other person, and I make this declaration conscientiously believing it to be true.

Signed at: Vancouver, BC

In the country of: Canada,

On the 14th day of October of the year 2008

[Signature]
CASE PROCESSING CENTRE
6212 - 55th Avenue
Vegreville, AB T9C 1W5

CLIENT:

06 January 2009

119 WEST PENDER STREET STE 302 WEST COAST DOMESTIC WORKERS
VANCOUVER BC V6B1S5

This letter refers to your application for permanent residence under the Live-in Caregiver Class.

We have been advised by the visa post in Manila that the medical assessment for your daughter has been upgraded from an M05 to an M03. However, as the medical results for all of your family members have now expired, new forms and instructions were sent to them yesterday by the visa post.

We will be reviewing your file again in early March to determine if we will be in a position to finalize your application. We will contact you at that time.

**Passports for yourself and your family members must be valid for the duration of your stay in Canada.**

It is your responsibility to maintain your temporary resident status while your application is being processed. Remaining in Canada without valid status is prohibited by the Canadian Immigration Act. Should you need to extend your status, please obtain the "Application to change conditions, extend my stay or remain in Canada" kit by visiting the Citizenship and Immigration Canada Internet web site at [http://www.cic.gc.ca](http://www.cic.gc.ca) or by contacting the Immigration Call Centre at the number indicated below.

The client number in the top right-hand corner of this letter is your personal identification number; it lets people see and use information about you that is on your immigration file. To protect yourself, you should not let anyone else use it. When you send a letter or fax to us, please include your personal identification number.

If you change your address, please tell us immediately by calling the Citizenship and Immigration Canada Call Centre at 1-888-242-2100, or on the internet at [http://www.cic.gc.ca](http://www.cic.gc.ca). You can also get general information and application kits from the Call Centre or on the internet. If you require further assistance, please phone the Call Centre and be ready to give your client number and your date of birth.

Office
Case Processing Centre
Vegreville, Alberta
Citizenship & Immigration Canada
1148 Hornby St.
Vancouver, BC
V6Z 2C3

File Number: 05 December 2008

Client Id:

Dear Ms.:

This refers to your application for permanent resident status in Canada.

In the course of reviewing your file, it appears that your application for permanent residence may have to be refused as you do not appear to meet immigration requirements.

In order to become a permanent resident as a member of the live-in caregiver class, you and your family members, if any, must comply with admissibility requirements as specified in the Immigration and Refugee Protection Regulations.

Regulation 72(1) states:

A foreign national in Canada becomes a permanent resident if, following an examination, it is established that

(e) . . .

(i) they and their family members, whether accompanying or not, are not inadmissible.

The sections of the Immigration and Refugee Protection Act that describe grounds for inadmissibility to Canada are in Division 4 of Part I. The text of this Division is attached to this letter.

On your application for permanent residence, you list your son as your only family member living outside of Canada. You have submitted a birth certificate for your son which was issued on . This birth certificate shows that was second in birth order, the total number of children born alive to you was two and the number of children still living at the time of 's birth was two. In your letter dated 08 November 2007, you state that you have an older son, born at home with the aid of an unlicensed midwife prior to the birth of . You state that to save you embarrassment, you put your sister-in-law's name on his birth certificate. You state that you would like to sponsor this child to Canada.

Live-in caregivers must name all of their family members, whether in Canada or abroad, on their applications so that they can be assessed against requirements for permanent residence. As you did not declare your oldest son on your application for permanent residence, he may not have been assessed by the visa office. It appears, therefore, that you are inadmissible to Canada under paragraph 40(1)(a) of the Immigration and Refugee Protection Act.
You have the opportunity to make any submissions related to this matter. Should you wish to make submissions, you must do so in writing to this office within 30 days from the date of this letter. If you do not make a submission, a decision regarding your ability to comply with these requirements will be made on the basis of the information on your file. This may result in your application being refused and no further consideration given to the request for permanent residence unless a new application, including fees, is submitted.

If you need more than 30 days to respond, please write to this office and explain why and how much more time you require.

The client number shown in the upper right corner of this letter is your personal identification number. This number provides access to information on your file and for your own protection, you should not allow any other person to use this number. If sending correspondence to Citizenship and Immigration Canada please include your personal identification number. Failure to include this number could result in the return of your correspondence unanswered.

If you require further assistance, please telephone the Call Centre at 1-888-242-2100 and be prepared to quote your client number and your date of birth. General information and application kits may also be obtained through our Internet web site at [http://www.cic.gc.ca].

Yours truly,

[Signature]

C&I Officer
28 January 2009

Officer
Citizenship and Immigration Canada
1148 Hornby Street
Vancouver BC V6Z 2C3

RE: , DOB: , Client ID #: Philippines

Dear Officer,

I am writing on behalf of my client, Ms. , in reply to your letter dated 5 December 2008. I appreciate your consent to extend our deadline to 19 March 2009.

The purpose of this letter is to support Ms.'s application for permanent residence, which was filed in the live-in caregiver class. As you have pointed out, Ms. declared that she had only one child on her application for permanent residence, though she does in fact have a second child, namely , who was born on .

Through the course of this letter, we intend to provide a full explanation as to why's name was omitted from Ms.'s application for permanent residence. We also ask for compassionate consideration, and approval of Ms.'s application for permanent residence, either in the live-in caregiver class, or on Humanitarian and Compassionate Grounds.

Background

We have attached an affidavit from Ms. which describes the circumstances surrounding the birth of her eldest son. As Ms. has explained, was conceived in a violent rape that occurred more than 17 years ago while Ms. was living in the Philippines. In addition to the violence of the sexual assault, Ms. was subjected to severe chastisement by her own family, and was ultimately cast out of their home for fear that she would bring shame to her family.

The psychological impact of the rape and the subsequent abandonment and shaming that Ms. experienced has been severe. Until very recently, Ms. was unwilling to talk to anyone about what happened to her, for fear that she would again be humiliated and stigmatized as a promiscuous woman.
Psychologist has rendered the opinion that Ms. suffers from post-traumatic stress disorder (PTSD), and further opines that the reasons put forward by Ms. for excluding her son’s name are highly credible. In coping with the sometimes debilitating symptoms of chronic PTSD, Ms. suppresses memories of the attack, persistently avoiding any reminders of her past trauma. Unfortunately, this has led to omission by Ms. of any reference to her son or the attack that led to his conception in representations made to Citizenship and Immigration Canada. As stated by “a pervasive and extended history of shaming and denial from significant others – family and former partner – entrenches an inability to report or acknowledge the significance of that first son”.

> Submissions

We concede that Ms. did not provide complete and timely information about her eldest son. In light of the circumstances that lead to her omission, we submit that it would be unconscionable to find Ms. liable for misrepresentation. Her omission was the direct result of trauma and a credible fear of further stigmatization. As such, we request continuous processing of Ms. application in the live-in caregiver class.

Even if it is determined that Ms. is inadmissible for misrepresentation, we take the position that the circumstances of Ms.’s case warrant compassionate consideration pursuant to s.25 of the Immigration and Refugee Protection Act.

Ms. has taken numerous steps toward recovery. For the first time in her life, she is enjoying the benefits of a stable and supportive relationship. She has also decided to enter counselling in an effort to fully address the painful memories from her past. Ms.’s recovery will be significantly impeded if she is forced to leave Canada as a result of facts arising from a brutal and traumatic incident. On a finding of misrepresentation, Ms. will be barred entry to Canada for a two year period, and will therefore be forced to endure long-term separation from the man she wishes to marry.

We sincerely hope that you will allow Ms. to amend her application at this time and include her first son, so that she and her children can reunite in Canada as permanent residents. For the reasons indicated in her affidavit, Ms. is unable to provide an accurate birth certificate for her son. If necessary, she is willing to submit to DNA testing to establish her parentage.

We would also be grateful if you could assure that all correspondence intended for is forwarded to Ms. directly so that she can ensure that the documents are completed correctly.

Yours truly,
WEST COAST DOMESTIC WORKERS’ ASSOCIATION
Per:

Deanna Okun-Nachoff
Barrister and Solicitor
IN THE MATTER of an Application for Permanent Residence by

And IN THE MATTER of the Immigration and Refugee Protection Act 2002 and Amendments thereto;

I, [name], of [address], in the City of [City], in the Province of British Columbia, DO SOLEMNLY DECLARE THAT:

1. I am a citizen of the Philippines born [date].

2. I came to Canada to work in the Live-in Caregiver Program ("LCP") on 9 November 2004.

3. On my application to enter Canada in the LCP, I listed only the name of my younger son, [name] (hereinafter "[name]"), who was born [date], omitting the name of my eldest son, [name] (hereinafter "[name]"), who was born on [date]. I make this affidavit to explain the omission of [name]'s name on my application to enter Canada in the LCP, and on my application for permanent residence in Canada.

4. I was born of a very brutal rape which occurred in the Philippines in or about September 1991. I have only fragmented memories of the attack itself, but I have pieced together the following memories.

5. I remember singing as I walked down the street in [place], Philippines. Then, suddenly, I remember feeling something placed over my mouth and nose. I began to feel dizzy, and then I remember being carried. After a time, I started to feel pain, but I was unable to open my eyes or to make any noise come from my mouth. From that point, I don't remember anything until the moment I awoke on the floor of an abandoned building. I was alone and I was bleeding as if I had my period. My clothes were all torn, and I had trouble opening my eyes completely.

6. I was so ashamed and embarrassed about what had happened to me that I refused to consult a doctor or make a police report, knowing that I would be required to tell the
story about what had happened to me. I just wanted to be left alone to forget everything.

7. After the rape, I suffered from occasional vaginal bleeding. As a result, I didn’t realize that I had conceived a child until I was already five months pregnant. When I informed my parents that I had become pregnant, they refused to provide any support or assistance. My mother became certain that she would face public shame if I bore a child out of wedlock, since pre-marital sex is not acceptable in our Roman Catholic culture.

8. I told my mother that my child had been conceived in rape, but she refused to accept this explanation and accused me of pretending that I had been raped just to hide the identity of ——’s father. Against my parent’s wishes, I decided to carry through with the pregnancy, at which point they ordered me to leave our home immediately.

9. In addition to the trauma that I suffered from the rape, I was extremely traumatized and humiliated by my mother, who refused to accept that I had been raped and threw me out of my home as if I had committed an immoral act.

10. When I was forced to leave my parent’s home, I went to stay briefly with my aunt. But my aunt also sent me away to a far off village in ——, where I had no friends or family — because she wanted to hide my pregnancy from her children.

11. Throughout my pregnancy, I experienced extreme depression and also suffered from nightmares and terrifying memories of the rape. These symptoms were made worse by the fact that my own family had cast me out when I needed them the most. I seriously considered suicide on numerous occasions, and would have killed myself if my cousin had not walked into the room one day as I held a knife to my belly.

12. After my son was born, I was completely lost and displaced. I divided my time between the homes of friends and relatives, during which period my son was supported by my aunt ——, who was living and working in ——.

13. When my son was just four years old, I decided that I had no choice but to seek employment abroad, since I had been unable to support myself or my child on the part-time income I earned in the Philippines.

14. A new problem arose when it came time to register my son for school, since I had failed to register his birth for fear that I would be questioned about the identity of ——’s father. My mother insisted that it would cause further scandal to the family if I registered —— as my illegitimate son, and therefore she insisted that my brother register —— as his own legitimate child. I have attached a copy of ——’s birth certificate at Exhibit “A”.
15. While working in [ ], I started a relationship with [ ], the father of my younger son [ ]. At first I did not tell [ ] that I had a son living in the Philippines because I was afraid that he would judge me as my own family had done. My worst fears came true when I did tell [ ] about [ ] – he became extremely upset and even cut off all communication with me for several weeks. Eventually, [ ] and I reconciled our relationship, and I soon became pregnant with our son [ ].

16. After I had become pregnant, [ ] suggested that I return to the Philippines in March 1998 and promised that he would come join me in May 1998 so that we would get married. I did return to the Philippines, but many months went by and [ ] did not make any effort to contact me. Eventually, I came to learn from his family that [ ] had visited the Philippines and then returned to [ ] without informing me.

17. I have not seen [ ] at any time since I left [ ] in March 1998. [ ] has never met our son, nor has he provided any support. I have always felt that [ ] abandoned me and our son [ ] because I had been raped.

18. When I returned to the Philippines from [ ], pregnant with my second child – I had no choice but to return to live with my mother. From that time, my mother and I lived in the same house, but she barely acknowledged my existence and continued to treat me as an outcast.

19. When [ ] was four months old, I went to visit his father’s family, hoping that [ ] might recognize [ ]’s birth and provide me some support. I still remember the terrible humiliation I felt when [ ]’s mother suggested that I was a promiscuous woman and that her son was not [ ]’s real father. All the emotions that I felt immediately following the rape came rushing back to me: the shame, the anger and the fear. I felt certain that I would lose my sanity, and suffered from a period of terrible depression.

20. When [ ] was just three years old, I again made the decision to work abroad – this time in [ ]. While working in [ ], I made the decision to apply for a work permit in Canada.

21. In my application to enter the LCP, I was asked to list the names of my children. This posed a great dilemma for me, since [ ]’s birth had been registered as though he was the son of my brother. Lacking any proof that [ ] was my son, I felt that I could not
declare as my legal dependent. In hindsight, I realize that I could have explained the circumstances of birth to immigration, but I frankly was not able to face the fact that I had been raped and then abandoned by my family. The memories are almost too painful to bear. I therefore made the decision to omit's name to avoid any further humiliation.

22. For the duration of my stay in Canada, I continued to declare only my youngest son on all immigration applications. However, in October 2007, I received a letter from Citizenship and Immigration Canada asking for information about my eldest son. In my reply to the immigration office, I explained that's birth had been registered in the name of my brother, without providing any of the background details contained in this affidavit.

23. I admit that I failed to provide Canadian immigration with complete information about from the beginning of the process. However, I hope you can understand why I made this mistake. It is difficult to fully express how difficult it has been for me to deal with the rape and with the criticism and humiliation I faced in the Philippines during and after my pregnancy. More than seventeen years have passed since the rape, and still I suffer from nightmares and flashbacks when my memories are triggered. As a way to ensure my survival, I have made every effort to deny what happened.

24. In recent years, I have taken several steps toward recovery. In particular, I have entered a committed relationship with a Canadian citizen, Mr. (hereinafter ""), and have shared with him the entire story of what happened to me in the Philippines. After several years of dating, and I decided to move in together on a full-time basis in April 2008, and have now been cohabiting for close to a year. and his family treat me like the family I have wished for since my childhood. Finally I feel that I truly belong.

25. I have attached at Exhibit “B” a number of photographs taken over the three year period that I have been dating As illustrated in these photographs, and I have taken many trips together in Canada.

26. I have every intention to marry as he has shown complete sympathy and understanding toward me. I have also recently made the decision to seek counseling so that I can deal with the painful memories from my past. It is my sincere hope to be reunited in Canada with both my children, and to move on toward a happy future with
and my two sons. For the sake of my children, I hope that Canadian immigration will allow this to happen.

I MAKE THIS SOLEMN DECLARATION, CONSCIENTIOUSLY BELIEVING IT TO BE TRUE AND KNOWING THAT IT IS OF THE SAME LEGAL FORCE AND EFFECT AS IF MADE UNDER OATH.

DECLARED BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 21st day of January, 2009

A Notary Public in and for the Province of British Columbia

DEANNA OKUN-NACHOFF
Barrister & Solicitor
West Coast Domestic Workers' Association
302-119 West Pender Street
Vancouver BC V6B 1S5
Tel: 604.669.6452 Fax: 604.669.6456
13 May 2008

Citizenship and Immigration Canada
Case Processing Centre
Vegreville AB T9C 1W3

To Whom It May Concern:

Re: [Client Information], Client #: [Client Information], Date of Birth: [Client Information], Philippines

Application for Permanent Residence on Humanitarian and Compassionate Grounds

I am writing on behalf of my client, Mrs. [Client Name], in my capacity as Staff Lawyer and Executive Director at the West Coast Domestic Workers’ Association (WCDWA). WCDWA is a non-profit organization that provides free education and legal assistance in the form of advocacy, support and counselling to migrant workers seeking permanent residence in Canada, particularly those who entered Canada in the Live-in Caregiver Program (LCP).

Introduction

Mrs. [Client Name] is a Philippine National who came to Canada on [Date] in the LCP. Following her arrival in Canada, Mrs. [Client Name] completed the work requirements set out at s.113 of the Immigration and Refugee Protection Regulations (IRPR). It is our submission that Mrs. [Client Name] is eligible for permanent residence in the live-in caregiver class, or in the alternative, that she should be granted landing on Humanitarian and Compassionate (H&C) pursuant to s.25 of the Immigration and Refugee Protection Act (IRPA).

We have attached evidence to demonstrate that Mrs. [Client Name] has completed 24 months of authorized employment, and that she is eligible for landing in the live-in caregiver class. Our reason for advancing H&C arguments is that Mrs. [Client Name]'s youngest son - [Son's Information] - has been diagnosed with Down's Syndrome since my client's arrival in Canada. In the event that you find that [Client Name] is medically inadmissible to Canada, we ask that Mrs. [Client Name] be granted an exemption from s.42 of the IRPA and landed in Canada on H&C grounds. It is our submission that Mrs. [Client Name] and her family will

1
suffer unusual, undeserved and disproportionate hardship if Mrs. is forced to leave Canada now in light of the fact that she has become established in this country over a three-year period. Further, has become dependant on medical treatments that Mrs. has been providing since her arrival in Canada. If Mrs. is denied landing in Canada, she will be unable to afford these therapies on her salary in the Philippines and ’s best interests will be profoundly compromised.

In the course of this letter, we intend to enumerate the factors that warrant exceptional consideration on H&C grounds. We also intend to show that it is in ’s best interest that his mother be allowed to regularize her status in Canada so that she can continue to support him and eventually reunite her family in Canada.

We rely on Operational Bulletin 021, which was issued by Citizenship and Immigration Canada (CIC) on 22 June 2006. The policy clearly states that an inland application for landing can be approved on H&C grounds in spite of a s.42 inadmissibility.

**Education and Work History**

What follows is a summary of the facts reported to me by Mrs.:

- **Background Education and Training**

  Mrs. struggled to put herself through college, studying part-time while working full-time as an operator at an electronics company. In , Mrs. completed a secretarial course, following which she was promoted to the position of recorder at an electronics company called . In , Mrs. married Mr.

  Shortly after her marriage, the company undertook mass layoffs. Mrs. was forced to relocate to another electronics company, (the break-off company from ) but was only employed part-time. Mrs. gave birth to her first child, on . Mrs. and her husband struggled to support on their joint income, but fell on difficult financial times when the company that employed Mr. closed down. The financial crisis deepened when Mrs. gave birth to her second child, on .

  In , Mrs. made the difficult decision to move to because it was clear that her family was not able to survive if they all remained in the Philippines. From until , Mrs. worked in as a domestic helper for . During this period, Mr. stayed home and took care of his two children on a full-time basis.
Mrs. returned to the Philippines in [ ], at which time she opening a small “Sari Sari” store (like a convenience store). Her net income from that enterprise was less than P500 per day (approximately Cdn$4176/year). Mr. got a janitorial job at [ ]. Attached at Exhibit “A” is a certificate of Mr.’s earnings. In his first year at [ ], Mr. earned P3,000 monthly (approximately $834/year).

On [ ], Mrs. gave birth to her third child, [ ]. She was born on [ ]. When he was born, [ 's] doctors recommended a simple blood test to confirm that he had Down Syndrome. When Mrs. was unable to afford the test, which cost just P600, she realized that she needed to go abroad immediately. She left for [ ] on [ ] when [ ] was just 4 months old, because she was afraid that she would be unable to provide her newborn baby with the necessities of life unless she sought more lucrative employment outside the Philippines.

Mrs. worked in [ ] for more than a year. During this period of time, it became clear to Mrs. that her family would never be able to live without the increased income she was only able to earn as an overseas worker. However, Mrs. was unwilling to live forever apart from her family. As a result, Mrs. made the decision to move to Canada, since she had learned that, in Canada, she might eventually apply to bring her family together as permanent residents. At the time she made her application, she earnestly answered that none of her family members had received any treatment for any serious physical or mental illness, because her son was not receiving any treatment at that time.

Completion of the LCP

When Mrs. arrived in Canada she took up employment with the family of [ ] in [ ]. Mrs. was employed to care for Mrs. triplets, who were two years old when Mrs. arrived in Canada.

Mrs. worked for more than 16 months, until [ ], even following the family to [ ] when they relocated across provincial boarders. At the end of [ ], Mrs. decided that she no longer needed a full-time caregiver and therefore issued Mrs. notice of termination. We have attached Ms. letter of recommendation at Exhibit “B”, a Record of Employment at Exhibit “C”, and a T4 Statements at Exhibits “D”, “E” and “F”. ’s 2004, 2005 and 2006 Notices of Assessment are attached at Exhibit “G”, “H” and “I”.
Before she finished her contract with the ____ family, Mrs. ____ secured a job with ____ in _____. Mrs. ____ was employed to care for Ms. ____ daughter, ____, who was 5-months old at the time. While her papers were being processed, Mrs. ____ relocated back to ____. Mrs. ____ began working with the ____ family on or about ____ as soon as she received a phone call from her former employer in ____ that her work permit had arrived.

Mrs. ____ has been working with the ____ family for almost two years, during which time Mrs. ____ has been ____’s primary caregiver. In her letter, which is attached at Exhibit “J”, ____ has described Mrs. ____ as “family”. Likewise, in his letter, which is attached at Exhibit “K”, ____’s grandfather ____ has described Mrs. ____’s highly magnetic personality. He has also offered to employ Mrs. ____ at his manufacturing company, which currently employs 90 people in Canada, once she becomes a permanent resident.

In her role as ____’s caregiver, Mrs. ____ participates in local programs with ____ at the community gym, and in activities at her local recreation centre. She also accompanies ____ to daily play groups. In a word, ____ and Mrs. ____ are “inseparable” and have been inseparable since ____ was just 6 months old. Attached at Exhibit “L” is a selection of photographs of ____ and Mrs. ____ from the time that ____ was a small baby. We submit that ____ would suffer needless harm if Mrs. ____ were suddenly forced to leave Canada.

We point to section 5.19 of the Inland Processing Manual for “Immigration Applications Made On Humanitarian and Compassionate Grounds”, which states that immigration officers adjudicating H&C applications for landing must “take into account the best interests of a child who is directly affected by a decision under A25(1), when examining the circumstances of a foreign national under this section”. The section, and the case of Enriquez v. MCI 2007 FC 1002, both confirm that the interests of all children, must be taken into account, whether or not the child is related to the applicant by blood or marriage:

The relationship between the applicant and “any child directly affected” need not necessarily be that of parent and child, but could be another relationship that is affected by the decision. For example, a grandparent could be the primary caregiver who is affected by the immigration decision, and the decision may thus affect the child.

As proof of her employment with the ____ family, Mrs. ____ has attached her 2006 and 2007 T4 Statement at Exhibits “M” and “N” respectively.
Mrs. [redacted] completed 24 months of full-time employment as a live-in caregiver in or near [redacted].

[redacted] is Mrs. [redacted]'s five-year-old son born on [redacted]. Due to extremely limited financial means, [redacted]'s medical treatment up until [redacted] was limited to palliative treatment for the basic cough and cold, and a short hospitalization in or about December 2003 for pneumonia.

On or about [redacted], Mrs. [redacted]'s husband took [redacted] to the “Sick Child Clinic” at the [redacted] Hospital for an assessment of his son. The family had observed that he had Down Syndrome since birth, but he was neither formally diagnosed nor treated until [redacted], when he was referred to the Pediatric Endocrinology and Metabolism unit. We have attached the report from the [redacted] Hospital at Exhibit “O”, and the report from [redacted]'s first appointment at the Pediatric Endocrinology department (exhibit [redacted]) at Exhibit “P”.

At first, [redacted] was enrolled in an Individualized Occupational Therapy Program at the [redacted] Hospital. [redacted] began his program in [redacted], as demonstrated by the attached letter from [redacted] (Exhibit “Q”). In [redacted], [redacted]’s progress was deemed sufficient to render him eligible for the integrated Special Education (SPED) program, which is a daily program carried out in a classroom setting. We have attached a letter from [redacted]’s SPED teacher, Ms. [redacted] (Exhibit “R”).

The SPED program that [redacted] is currently enrolled in costs P36,000 per year (approx. Cdn$800), as demonstrated by the Schedule of Fees attached at Exhibit “S”. Mrs. [redacted] and her husband are committed to providing [redacted] the therapy he requires, and are able to do this while Mrs. [redacted] is working in Canada. However, if Mrs. [redacted] is forced to return to the Philippines, they will be unable to afford this tuition, which is equal to one half of Mr. [redacted]'s annual salary (see Exhibit “A”).

- **Educational Demands of Mr. [redacted]'s Older Children**

Mrs. [redacted] and her husband have three other children. [redacted] is enrolled in third grade, and her annual tuition is P18,298.00 per year (approx Cdn$414.93) (Exhibit “V”). [redacted] studies at the University of [redacted], which charges P26,233 per
semester (approx Cdn$1166 per year) — (Exhibit “W”). At first, [redacted] enrolled at
since the same school as his brother, but Mrs. [redacted] asked him to change schools because she
could not afford to send both of her sons to University in light of the high tuitions. As a
result, [redacted] transferred to [redacted], where the
tuition is P10,392 per semester (approx Cdn$460 per year) (Exhibit “X”).

In the first year following her arrival in Canada, Mrs. [redacted] remitted approximately
Cdn$4079.14 (Exhibit “Y”). In her second year, Mrs. [redacted] sent approximately Cdn$5555.39
(Exhibit “Z”) and this year, Mrs. [redacted] has already sent more than $4359 (Exhibit “AA”). Were
it not for these remittances, which can only be supported on a Canadian salary, Mrs. [redacted]’s
children would not be able to pursue advanced education, and her youngest son would not
have access to the treatment that he requires.

If and when Mr. [redacted] is admitted to Canada, he will begin earning a Canadian salary and
can contribute more substantially to [redacted]’s care. Mr. [redacted], whose letter is attached at Exhibit
“K” indicates that he is able and willing to employ Mr. [redacted] if he is granted landing or even
temporary status in Canada. If given this opportunity, Mrs. [redacted] will have access to further
support for [redacted]’s ongoing care and treatment.

Jurisdiction to Grant Landing on H&C Grounds:

We do not contest that [redacted] requires ongoing medical and social services, but rather request
an exemption from s.42 of the IRPA pursuant to s.25 of IRPA. We ask that Mrs. [redacted] be permitted to
remain in Canada as a permanent resident so that she can continue supporting all of her children,
and reunite her family in Canada after such a prolonged separation.

As stated at s.25, immigration officers have a duty to consider H&C arguments when
requested:

25. (1) The Minister shall, upon request of a foreign national who is inadmissible or who does not meet
the requirements of this Act, and may, on the Minister’s own initiative, examine the circumstances
concerning the foreign national and may grant the foreign national permanent resident status or an exemption
from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by
humanitarian and compassionate considerations relating to them, taking into account the best interests of a
child directly affected, or by public policy considerations [emphasis added].

On 7 June 2006, Citizenship and Immigration Canada (CIC) released Operational Bulletin 021,
which contains instructions regarding the examination of H&C Applications in Canada. The first
paragraph of the OB 021 reads as follows:

CIC officers assessing applications for humanitarian and compassionate (H&C) consideration must consider
exempting any applicable criteria or obligation of the Act, including inadmissibilities, when the foreign national
has specifically requested such an exemption, or it is clear from the material that the foreign national is seeking such an exemption.

According to the new H&CC policy guidelines, immigration officers have the delegated authority to grant an exemption s.42 of the Act. We ask that this exemption be granted based on the H&CC factors enumerated in Mrs’s application.

**Substantial Establishment**

Mrs has worked in Canada as a live-in caregiver for almost three years. During this time, she has contributed substantially to Canada's social and fiscal economy, establishing herself as a member of our community.

Mrs came to Canada as a live-in caregiver with the intention that she would complete the LCP and then re-train as a Registered Care Aide and take up employment in a Nursing Home.

During the course of her three-year residence in Canada, Mrs has acclimatized to the Canadian environment. In particular, Mrs has become indispensable to her employer, and integrated into her community. She has also upgraded her skills in the Canadian marketplace.

Mrs was a “Minister of Hospitality” at her local church in , from May 2005 until September 2005, when she moved to with her employer (Exhibit “BB”). Since she relocated to , Mrs has become an active member of the church in , where she has been a member since June 2006. Many of Mrs’s close friends meet during weekly attendance at Sunday Mass. Attached at Exhibit “CC” is a letter from two such friends, .

As a member of WCDWA, Mrs has also been actively involved in the community of live-in caregivers since December 2006, and has completed a number of skills-training courses offered by our organization and our community partners. In particular, Mrs completed WCDWA’s 5-week Level I Computer Training Course on 17 November 2007 (Exhibit “DD”), and the advanced four week “Level II” course (Exhibit “EE”). Through this training program, Mrs has made a number of close alliances. On 15 September 2007, Mrs received Red Cross Certification after she completed the “Parenting Skills” training course (Exhibit “FF”).

If Mrs is denied landing in Canada, she would be forced to leave the only home she has known over the last four years. More significantly, Mrs’s long-sought goal of reuniting her family and of providing a sustainable solution to her son’s health-care needs will be frustrated.

*Temporary Resident Permit for*
In the event that this application for landing is denied on H&C grounds, we submit that [redacted] should be allowed to remain in Canada on a Temporary Resident Permit (TRP).

There is precedent for granting temporary resident permits in cases of this nature. In the case of *Hilewitz v. MCI*, the Supreme Court of Canada found Mr. Hilewitz to be credible and likely to make a significant economic contribution to Canada. On that basis, it was recommended that a discretionary Minister's permit be issued so that Mr. Hilewitz and his family could enter and remain for up to three years. Mrs. [redacted]'s case is unique in that she has already made a significant economic contribution to Canada. She has been living and working in Canada and has an ongoing job offer. She also has an employment offer for her spouse. If Mrs. [redacted]'s application for permanent residence is to be refused, we ask that she be granted a temporary resident permit.

We rely on the case of *Japson v. MCI*, 2004 FC 520 in support of the proposition that Mrs. [redacted]'s request for a TRP must be considered. In *Japson v. MCI*, Madam Justice Mactavish considered a judicial review application filed by a live-in caregiver who applied for landing in the live-in caregiver class, but made submissions to the officer before the final decision was rendered. When the officer refused her application, Mrs. Japson sought judicial review, alleging that the officer had erred by failing to consider her request for a TRP.

Mactavish J. found that the officer’s failure to consider the request to issue a Minister’s Permit to Mrs. Japson constituted an error in law. Mrs. Japson was successful in her application, and the decision was ordered back for re-determination.

**Public Policy Grounds**

- **Purposes of the IRPA: Family Reunification**

It is clear from s. 3(1)(b) of IRPA that family reunification is among the primary purposes of immigration in Canada. If Mrs. [redacted] is denied landing in Canada, this principle would be substantially frustrated.

It is clear from the summary of Mrs. [redacted]'s family expenses, and from her own employment history, that Mrs. [redacted] will have no choice but to seek employment as a migrant worker if denied landing in Canada. When the UN Committee on the Elimination of Discrimination Against Women (CEDAW) conducted its most recent report on the Philippines in August 2006, it commented on the "feminization of migration", noting the absence of a "coherent and comprehensive approach to addressing the root causes of women's migration". The Committee noted that the Philippine
government had not instituted viable economic alternatives to migration and unemployment. Indeed, the Philippine government relies on overseas remittances to support its economy.

**Conclusion**

The circumstances of Mrs’s case are extremely compelling. Mrs worked diligently under the constraints of the LCP and has complied with the requirements set out at s.113 of the IRPR. In the interim period, she has become well-established in Canada, both socially and financially. We seek landing for Mrs on the following H&C grounds:

- Mrs has become a de facto resident of Canada.
- Mrs has been forced to work as an overseas worker with temporary status because it is was impossible for her to support herself and her family on the income she was earning in the Philippines.
- Mrs has been employed continuously since she arrived in Canada and she has an ongoing offer of employment.
- Having lived and worked legally in Canada for almost four years, the impact of a negative decision would be more onerous than in a case where an applicant has not made such significant contributions to Canada. Mrs has maintained her legal status throughout her three-year residency, and has always complied with the conditions of her stay.
- Mrs will not be able to continue financing her son’s therapies, or her older children’s higher education, unless she continues working as a migrant worker.

We understand that granting permanent resident status on the basis of H&C grounds is a discretionary decision. We sincerely hope that you will exercise your discretion in favour of Mrs’s request for permanent resident status.

Please find enclosed a signed consent form authorizing you to release information about Mrs to me. Please send us copies of any correspondence sent to Mrs so that we can remain informed of developments in her case.

Yours truly,
WEST COAST DOMESTIC WORKERS’ ASSOCIATION
Per:

Deanna L. Okun-Nachoff
Barrister and Solicitor

Encl:

Exhibit “A”: Certificate of Earnings,
Exhibit “B”: Letter of Recommendation,
April 17, 2010

Citizenship and Immigration Canada
Case Processing Centre
6212 – 55 Avenue
Vegreville AB T9C 1W3

To whom it may concern:

RE: [Redacted], Client ID#: [Redacted], Date of Birth: [Redacted]
Application for Permanent Residence, Humanitarian & Compassionate Grounds

I am writing on behalf of my client, Ms. [redacted] to support her application for permanent residence. I am writing in my capacity as Staff Lawyer and Executive Director of the West Coast Domestic Workers’ Association, a non-profit organisation that provides education and legal representation for migrant workers in Canada, particularly those in the Live-In Caregiver Program (LCP). I have been appointed as the legal representative, as demonstrated by the attached IMM-5476.

**Introduction**

[Redacted] came to Canada on [Redacted] in the LCP and has since completed 24 months of full-time work as a live-in caregiver, as prescribed at s.113(1)(d) of the Immigration and Refugee Protection Regulations (IRPR). We have attached [redacted]’s application for permanent residence in the live-in caregiver class.

Through the course of this letter we intend to make submissions surrounding s.40(1) and section 36(2) of the IRPA, to demonstrate that [Redacted] is not inadmissible on the basis of [Redacted] on criminality or. In the event that you find [Redacted] to be inadmissible to Canada, we ask that she be landed on Humanitarian and Compassionate (H&C) grounds, pursuant to s.25 of the Immigration and Refugee Protection Act (IRPA).

**Background and Training**

[Redacted] was born on [Redacted] in [Redacted], Philippines. She is the eldest of five children born to [Redacted]...
Throughout her young life, and her family struggled against extreme poverty. From the time that she was approximately 12 years old, her parents were forced to send her to live with her grandmother because they were unable to pay for her food or school tuition. Subsidized her school and accommodation expenses by helping her grandmother operate her piggery and restaurant.

She worked her way through two years of college, during which time she took courses toward a Bachelor of Science in Elementary Education. She was forced to leave college because her family was unable to afford her college tuition. In fact, she was forced to find full-time employment so that she could help pay her siblings’ high school tuition.

She travelled to, where she stayed with her uncle. She worked as a caregiver for his children from early at night and on the weekends, and was employed at a fast-food house during the day.

**Work in**

While she was living in, she was recruited to work in. The recruiter procured a passport for her that was issued in the name “**[redacted]**” entered using the false passport in or about 1985.

On her first admission to, she was issued a visitor visa that was valid for 90 days. While she was living in, she met the eventual father of her son, **[redacted]**. Mr. **[redacted]** introduced her to the owner of a club and, approximately six months after her arrival, she began working as an entertainer. She soon became fluent in the language.

According to, she enjoyed her job in. Unlike many Filipino workers in, she was not expected to engage in any sex work and was not subject to exploitation. She earned per hour, plus commissions (approx Cdn$1841 per month), and was able to send money to start rebuilding her family home. Moreover, she had entered a serious relationship with Mr. **[redacted]**.

Approximately one year after her arrival, she elected to depart voluntarily so that she could secure her re-entry in her own name. To this end, she presented herself to authorities. She was briefly detained and then released to return to the Philippines. Once returned to the Philippines, she went about securing a passport in her legal name, at which point she disposed of the passport issued in the name **[redacted]**.

She obtained a passport in the name “**[redacted]**” before the end of. She then returned to as a tourist almost immediately. Once back in, she resumed her employment at the same club she worked at before she left. While still in, she obtained a “cultural
visa”, which allowed her to remain in for a prolonged period of time to study the language and culture.

continued her relationship with Mr. until the early months of when she learned that she had become pregnant. According to Mr. encouraged her to terminate the pregnancy. When refused, Mr. made it clear to that their relationship was over and sent her back to the Philippines where she delivered her baby, on .

As described in her affidavit, registered her son’s birth while she was still living in the Philippines, but her mother then re-registered the birth after returned to . On the “late registration” birth certificate, appears as ’s mother, but ’s grandfather (’s father) appears as ’s father, so it appears on the birth certificate that is the child of an incestuous marriage between and her own father, ’s second birth certificate is registered in the name “”. As explains, her mother executed the late registration because of her fear that would face stigmatization if he were to be registered at school as the illegitimate son of a foreigner.

Shortly after ’s birth, returned to because she needed to earn a higher level of income than she could earn in the Philippines. To this end, she obtained another visitor visa in or about . Once in , applied again to convert her status to a cultural visa, but her application was refused.

After the refusal of her second cultural visa application, remained in for approximately five years, and then moved to for the final three years before she returned to the Philippines. During this time, supported her son, her parents and her siblings with her earnings. She put her brother and her sister through college, she also bought a farm like the one that her grandmother operated for many years, and she sent the funds necessary to build the house that is currently inhabited by her entire family.

While she was working in , she was exposed to the drug known colloquially as “shabu”. Approximately six months later, in was arrested on suspicion of drug use. was detained and interrogated, but was never convicted and therefore has no criminal record, as demonstrated by the original police clearance attached at Exhibit “A”. Because she was a visa overstay, was ordered to leave.

In or about met . Approximately a year into her relationship with Mr., became pregnant with her second child. was born in , Philippines on .

3
and Mr. lived together in harmony with their two children when their father became very ill and required surgery to remove one of his kidneys. Because of immediate and ongoing medical needs, was forced to gradually sell many of her assets, and ultimately to go abroad and seek employment because she was unable to support two children and her ailing father on her income as a farmer and independent businesswoman. Ultimately, decided to go to work in as a domestic helper.

The Years

worked for one employer, from until .

On or about , the first of a series of tragedies befell and her family.

's partner of almost four years and the father of her youngest child passed away from pancreatic cancer, having been diagnosed only a few months prior.

Political Violence In

While she was working in 's family was hit with a second tragedy: a brother, was a candidate for Councillor in , Philippines, as demonstrated by his "Certificate of Candidacy" which is attached at Exhibit "B". hoped to follow in the footsteps of his father, , who had served for approximately 25 years in municipal politics.

In the days before the election, allegedly received threats against his life, and was pressured to accept bribes to leave his place and abandon the election. According to, was asked to revoke a petition he had initiated to close a local Karaoke Bar, which was owned by . refused to change his stance.

On , was shot six times in front of his pregnant wife and son, as demonstrated by the autopsy report and death certificate attached at Exhibits "C" and "D". We have also attached an article from the local newspaper, which describes the events surrounding 's murder (Exhibit "E"). Although witnesses were unable to identify the two shooters, there was no controversy about the fact that the perpetrators came from the Karaoke Bar located just next to 's home and returned to the bar after the murder was carried out.

's father, lodged a formal complaint against a local police officer who was at the Karaoke Bar at the time of the murder, but allegedly failed to conduct any investigation into the matter. It is the family's belief that the police either perpetrated the crime or conspired with the perpetrators to ensure that there would be no prosecution against
those who murdered [REDACTED]. Mr. [REDACTED]'s letter of complaint, which was sent to the Chief of the Philippine National Police, is attached at Exhibit “F”.

As stated in the complaint, it was Mr. [REDACTED]'s belief that [REDACTED] carried out his duties of investigation in a negligent way to allow [REDACTED] or his delegates to perpetrate the murder, since [REDACTED] had close personal ties with the [REDACTED] sent money to the Philippines to pursue the case. We have attached copies of the preliminary affidavits that were submitted in court at Exhibits “G”, “H”, “T”, “J” and “K”.

The evidence presented by Mr. [REDACTED] was that [REDACTED] alleged that he did not hear the six gunshots that killed [REDACTED], even though they were fired just 25 meters from the bar where [REDACTED] was seated. It was also alleged that [REDACTED] was liable for “neglect of duty” or for “failing to quell a disturbance or to protect a person from death or injury when able to do so”. In particular, Mr. [REDACTED] showed that [REDACTED] failed to cordon off the area, carry out a gun check, or conduct “rondas” in the area, as alleged.

[REDACTED] baldly denied the allegations of neglect, without providing any evidence to counter the accusations made against him, stating merely that Mr. [REDACTED] was “trying to ruin his reputation as an officer of the law”. According to the record, [REDACTED] did not provide any evidence, nor any reason why Mr. [REDACTED] might want to ruin his reputation.

As shown at Exhibit “L”, the National Police Commission wholly accepted [REDACTED]'s version of events, specifically that he maintained calm inside the bar and prevented anyone from leaving the facility. The Commission wholly disregarded the affidavit evidence from [REDACTED], [REDACTED] and [REDACTED] (Exhibit “J”), all of whom were in the karaoke bar when [REDACTED] denied hearing the gunshots, and then failed to cordon off the area until the police arrived, at which point the perpetrators had fled.

Mr. [REDACTED] provided evidence, which was not addressed by the Commission, that [REDACTED] relied upon his employees (who worked at the [REDACTED] bar) to support his allegation that the police conducted a thorough investigation. Mr. [REDACTED] provided counter affidavits sworn by residents of Brgy. [REDACTED] – residents who were not in the employ of [REDACTED] – and they all swore that there were no patrols carried out on the night of [REDACTED]'s murder (Exhibit “K”).

The Commission dismissed the complaint without addressing Mr. [REDACTED]'s allegation of neglect, in spite of the evidence produced by Mr. [REDACTED].

[REDACTED] and her father wished to proceed with their complaint at a higher level, given the cogent evidence of negligence and corruption, but were forced to abandon the proceedings because they could no longer afford to pay the lawyers to pursue the action. It was Mr. [REDACTED]'s sincere hope
that, if he won his complaint against [blurred text], he might be able to persuade [blurred text] to speak about the [blurred text] involvement in the murder. Until that point, Mr. [blurred text] had been unable to get anyone to cooperate as witnesses in a murder trial – including the person who had attempted to bribe [blurred text] to abandon the campaign to close the karaoke bar. Moreover, the police had failed to pursue any investigation or prosecution in spite of the [blurred text]'s wife's evidence about the death threats her husband had received within hours of his murder.

After [blurred text]'s death, [blurred text] began supporting her brother's eldest son ([blurred text]), who is in his final year of high school. With [blurred text]'s support, [blurred text] will be entering college next year. Attached at Exhibit "M" is an affidavit from [blurred text] confirming that [blurred text] has been supporting her nephew since [blurred text]'s death.

**Coming to Canada**

[blurred text] met her prospective Canadian employer while she was in the Philippines attending [blurred text]'s funeral. When Mrs. [blurred text] offered [blurred text] a full-time job as a live-in caregiver in Canada, [blurred text] accepted the job offer and began processing the papers.

**Work in the LCP**

**[blurred text]: 1 [blurred text] (5 months)**

When [blurred text] arrived in Canada, she completed approximately five months of employment with her first employer, [blurred text]. Because of the difficult employment conditions she has described in her affidavit, [blurred text] decided to terminate her contract on [blurred text]. Ms. [blurred text] issued a 2004 T4 to [blurred text] which is attached at Exhibit "N". According to [blurred text], she has sent a written request for ROE, but Mrs. [blurred text] has not replied.

**[blurred text]:**

After she left her job with Mrs. [blurred text], [blurred text] found employment with [blurred text] and agreed to start her job immediately since this was the only way for her to secure stable accommodation and income.

[blurred text] started her job with Ms. [blurred text] on or about [blurred text]. Because of delays processing her application at HRSDC and CIC, she did not receive her work permit [blurred text].

Because [blurred text] did not have a work permit until [blurred text], her former employer did not pay the income tax source deductions for the period from [blurred text]. As a result, [blurred text] has only been able to obtain a T4 from [blurred text] (Exhibit "O"), and her ROE (Exhibit "P") reflects only work carried out in [blurred text]. Ms. [blurred text] has sent a letter of reference, which is attached at Exhibit "Q".
After she left her job with Ms. [redacted], she went to stay with a friend from church who soon found employment with [redacted], a single mother, to care for her daughter [redacted].

Over the last two years, she has become a central part of Ms. [redacted]'s household. She is responsible for coordinating [redacted]'s after-school activities, and supervises [redacted] most evenings and during Ms. [redacted]'s many out-of-town business trips. She has developed a close bond with [redacted], having lived with her and acted as her primary caregiver since she was just eight years old.

Attached at Exhibits “Q” and “R” respectively are copies of L’s T4 Statements from [redacted] and [redacted]. At Exhibit “S” is L’s Summary of Earnings and Deductions from [redacted], and at Exhibit “T” is Ms. [redacted]’s letter of recommendation. Also attached, at Exhibit “U”, is a letter from Ms. [redacted]’s live-out partner, [redacted].

**Degree of Establishment**

- **Community Connections**

  During her non-working hours, she has become very established in her church, [redacted]. Attached at Exhibit “W” is a letter from her pastor, [redacted], and from two elders of her church, [redacted] (Exhibits “X” and “Y”).

  She has a network of friends through the church community. In times of unemployment, she has stayed with her fellow church members, as in [redacted], when she stayed with her [redacted]. Attached at Exhibit “Z” is a letter from Ms. [redacted] which extends an ongoing offer of financial assistance and accommodation, should the need arise, and at Exhibit “Z” is a letter from [redacted]’s friend [redacted].

- **Wishes to Support her Family in the Philippines**

  After entering Canada, she continued to support her children. As described above, she has also been supporting her nephew [redacted] since the death of her brother [redacted].

  In addition, she supported her father, who required a kidney operation in [redacted], which she paid using her salary from [redacted]. Following his operation, Mr. [redacted] required constant medication and maintenance. In [redacted], after his second kidney failed, she was forced to send the lion’s share of her salary from her job in Canada to provide her father with the extremely costly dialysis treatment he required, but Mr. [redacted] died quickly, in large part because he was unable (even with his daughter’s remittances) to afford the constant dialysis that he required. [redacted]’s mother has also faced
a variety of medical problems, and again [redacted] has been sending large remittances so that her mother can obtain a proper diagnosis and treatment.

If [redacted] is denied landing in Canada, she will be unable to continue supporting her family in the Philippines. With all the financial demands she is facing, it is simply not viable for [redacted] to return to the Philippines on a full-time basis. As in the past, she will be compelled to seek employment as a migrant worker, as she has done so many times in the past. Already, [redacted] has been forced to live apart from her son [redacted] since he was just 2-months old (with the exception of a five year period when he was less than 13 years old) and substantially apart from her daughter [redacted] since she was just 1-year old. We submit that this imposes undeserved and disproportionate hardship on [redacted] and violates her children’s best interests, contrary to the *Convention on the Rights of the Child*.

**Conclusion**

We are seeking an exemption from ss.40 and 36 of the IRPA. Although [redacted] failed to disclose that she committed or was charged with any criminal offence in the past, we submit that she should be granted landing in Canada on the basis that she would suffer undeserved and disproportionate hardship if forced to return to the Philippines at this time.

Please find enclosed a signed consent form authorizing you to release information about [redacted] to me. Please send us copies of any correspondence sent to [redacted] so that we can remain informed of developments in her case.

If you have any questions or need more information, please feel free to call me at (604) 669-6452. I attach an IMM-5476 for this purpose. Thank you.

Yours truly,

WEST COAST DOMESTIC WORKERS’ ASSOCIATION
Per:

Deanna L. Okun-Nachoff
Barrister and Solicitor
cc: client
CANADA

PROVINCE OF BRITISH COLUMBIA

CITY OF VANCOUVER

TO WIT:

IN THE MATTER of an Application for Permanent Residence by:

And IN THE MATTER of the Immigration and Refugee Protection Act 2002 and Amendments thereto;

AFFIDAVIT OF:  

I, , in the Province of British Columbia, DO SOLEMNLY DECLARE THAT:

1. I am the Applicant and I have personal knowledge of the facts and matters hereinafter deposed to except where stated to be based on information and belief and where so stated I verily believe the same to be true.

2. I am a 42 years old citizen of the Philippines. I came to Canada in the Live-In Caregiver Program (the “LCP”) on 29 February 2004.

3. I was born on in, Philippines, where I grew up in extreme poverty.

4. Starting from the age of 12 years old, I went to live with my grandmother because my parents were unable to support me along with my other siblings. Growing up in my grandmother’s house, I was expected to help out at her piggery and restaurant. I worked in evenings, weekends and school holidays cleaning the pig-pens, working in the restaurant, and helping in the rice plantations and vegetable farm.

5. For two years, I worked my way through college at University but was forced to drop out because my parents were relying on me to pay school tuition for my two brothers, who were in high school at the time.

6. Because my earnings in the province were very low, I moved to where I stayed with my uncle and found part-time employment. When I was not caring for my cousins, I worked at a local fast food restaurant, earning approximately P1000 per month (approx. Cdn$22) plus food and accommodation.

7. Approximately a year after I moved to , I was approached by an employment agent who told me that I could earn (Cdn$113) per month, plus free accommodation and a food allowance if I went to work in as an entertainer. At the time, I was looking for ways to pay my brothers’ school tuition so they would not be forced to beg for “hand-outs” from my grandmother, aunts, uncles and
cousins or to work in their homes like I had been doing. I was also determined to help my mother make necessary repairs to the family home, which was in danger of collapsing due to years of neglect.

8. I seized the opportunity to go to because I was promised that I would be able to increase my income by five times, and that I would escape the relentless work schedule I was experiencing in the Philippines.

9. Two days after I met the recruiter, I was given a plane ticket and passport in the name of . In 1985, I entered using this passport, with a visitor visa that was valid for 90 days.

10. Shortly after I arrived in , I met Mr. and we began a romantic relationship. He encouraged me to leave the recruiters who brought me to . He introduced me to the owners of a club, and I was hired to welcome and converse with guests, light cigarettes and sing karaoke. I soon became fluent in the language and was earning approximately Cdn$1841 per month from salary and commissions.

11. In 1986, I decided to depart so that I could re-enter the country on my own passport. I left voluntarily and presented myself to the authorities.

12. After a brief detainment by authorities, I returned to the Philippines where I secured a passport in my legal name. I immediately disposed of the passport issued in the name of .

13. I returned to on a visitor visa before the end of 1986, at which time I resumed my employment at the same club I worked at prior to my departure.

14. Before my visitor visa expired, I obtained a “cultural visa” which permitted me to remain in to study the language and culture. Unfortunately I cannot remember the name of the school where I studied during the days.

15. In 1987, I became pregnant with Mr. ’s child. Mr. wanted me to terminate the pregnancy. When I refused to do so, Mr. made it clear that our relationship was over. He paid to send me back to the Philippines so that I could give birth.

16. I gave birth to my son on and I named him . Attached at Exhibit “A” is a copy of ’s original birth certificate. When I registered his birth, I did not want him to be registered as an “illegitimate” child, therefore I inserted a date of marriage, stating that I had married Mr. in . In fact, I never married Mr.

17. When was almost six years old, my mother informed me that she was concerned that might face problems in the Filipino school system as the child of a national. At the time, I was living again in , but my mother kept telling me that
Filipino children (called "Kanin") were being subject to ridicule and in some cases even kidnapped. My mother took matters into her own hands and registered my sister's birth for a second time. On the new birth certificate, I am listed as my mother's mother, but my own father is listed as my sister's biological father. The "delayed registration" birth certificate, which is attached at Exhibit "B", indicates that I am legally married to my own father, and that he is the son of our marriage.

18. After I was born, I felt compelled to return to the Philippines because I knew that I would not be able to earn sufficient income to support my family in the Philippines, particularly with a newborn baby.

19. I obtained a 90-day visitor visa and returned to the Philippines when my sister was just a few months old. Once I arrived in the Philippines, I attempted to extend my stay on a second "cultural visa", however my application was refused.

20. When I learned that my application for cultural visa was refused, I made the decision to stay in the Philippines because I had no viable way to support my newborn son if I returned to the Philippines.

21. For the next five years, I lived in and worked in two clubs. After five years in ( ), I moved to ( ) where I lived for approximately three years and worked at a coffee shop by day and a karaoke club by night.

22. On my earnings through this period, I supported my son, my parents, put my siblings through college, purchased my own farm, and financed necessary renovations to our family home.

23. During my final year in the Philippines, I became friendly with a young Filipino woman. She introduced me to a drug known as "shabu". Within the year, I was arrested on suspicion of drug use. In or about December 1995, I was briefly detained and interrogated, but ultimately discharged with no criminal record since it was my first offence.

24. I was ordered to return to the Philippines in or about December 1995, since I did not have valid status in the Philippines.

25. With assistance from my boyfriend at the time, Mr., I returned to the Philippines where I worked on my farm. I took every step to make a viable living in my village in the Philippines. I even bought pigs, meat, and clothing from and began a small business.

26. In or about April 1997, I met and began dating , a folk singer and Disc Jockey. Our daughter was born in the Philippines on
27. My family fell on hard times in September 2000 when my father required surgery to remove one of his kidneys. I was forced to sell many of my assets and my business began to suffer.

28. It soon became clear that I could not support my two children and ailing father on the income from my farm and business. I ultimately decided that I had no choice but to seek employment abroad.

29. From 23 October 2000 to February 2004, I worked as a domestic helper for a family, caring for her two children. During this period, I earned approximately Cdn$474 per month.

30. While I was working in Toronto, my spouse passed away from pancreatic cancer.

31. Less than a year after My spouse died, my brother brother was shot six times and died in the Philippines. I was devastated.

32. My father was adamant that my brother was murdered by or on behalf of the police since he was trying to shut down the videoke club. My father urged me to finance a lawsuit against the Filipino police who had, in his opinion, abetted the perpetrators by failing to investigate the crime until the murderers had ample opportunity to vacate the murder scene. In spite of our best efforts, the police commission dismissed our complaint.

33. To the best of my knowledge, nobody was ever prosecuted for my brother’s murder.

34. Since my brother’s death, I have been financially supporting my brother’s eldest son, with his education costs.

35. While attending my brother’s funeral in the Philippines, I met the mother of my auntie, and she informed me that she was looking for a live-in caregiver in Canada. When I contacted her, she offered me the job.

36. From 1 April 2004 to 26 August 2004, I was employed by to care for her two children with special needs. I typically worked six days a week, from 8am until 9pm. Because I shared a bed with the youngest child, my work duties often extended all through the night.

37. While working with, my net salary was $900 for 13 hours work per day, six days per week.

38. On 26 August I confronted her about the fact that she had not been paying my MSP premiums, even though my contract clearly stipulated that she would pay my health benefits promptly informed me that she would not pay my premiums. She told me that I should be happy because she was not charging me the full price for board and lodging. Finally, she told me, “if I am not happy, I can leave by 30 August”. I was
so upset, particularly given the amount of unpaid overtime I had been working since my arrival, that I gave notice that I was terminating my employment effective immediately.

39. Left with no employer and no place to live on a full-time basis, I agreed to start my job with my second employer, , on 7 September 2004. I thought that I would receive my work permit right away but, with delays, I did not receive my work permit until 31 December 2004. I completed more than six months of authorized work for Ms. before they ended the contract on 15 July 2005.

40. From 15 November 2005 to the present time, I have been employed by , to care for her 8-year old daughter, .

41. I have become a central part of the household and help to coordinate ’s activities, take care of her on ’s out of town business trips and maintain a close bond with .

42. I have completed more than 24 months of work as a full-time live in Caregiver within three years of my arrival in Canada.

43. I am making this Affidavit to support my application for permanent residence in Canada, and any and all other immigration matters, including potential removal and for no other or improper purpose.

AFFIRMED BEFORE ME at the 
City of Vancouver in the 
Province of British Columbia, 
this 5th day of December, 2007

A Commissioner for taking affidavits in British Columbia.
12 September 2007

Officer
Citizenship and Immigration Canada
1148 Hornby Street
Vancouver BC V6Z 2C3

RE: DOB: Client ID #:
APPLICATION FOR PERMANENT RESIDENCE

Dear Officer,

I am writing on behalf of my client, Ms. (hereinafter “”) in reply to your letter dated 9 July 2007.

The purpose of this letter is to provide the information you have requested in your most recent correspondence.

Response to Statement and Question from the Manila Officer

We concede that there is no such legal entity as a “secret marriage”, and accept the Manila officer’s contention that the phrase “secret marriage” is “legally non-existent”. However, we take the position that “secret marriages” are commonly carried out in the Philippines by corrupt judges and law clerks that misrepresent the Filipino law, luring legally unsophisticated or underage couples who, for customary or religious reasons, do not feel that they are able to celebrate a marriage ceremony in the regular tradition.

and her husband, Mr. (hereinafter “”) honestly (though mistakenly) believed that their “secret marriage” would be a non-binding commitment ceremony presided over by a judge, Hon. . It was their intention that the ritual, with all its pomp and ceremony, would be kept between the parties involved, strengthening their bond, and fortifying their commitment in the face of an imminent separation that has lasted three years.

As we described in our previous letter, the couple did not consider marriage to be a viable option in December 2002, since’s sister had already announced her intention to marry early the following year. As we explained in our previous letter, according to Filipino tradition, it is considered bad luck to celebrate two family marriages within one calendar year.
Attached at Exhibit “A” is a letter from Prof. which confirms that many Filipino couples elect for a “secret marriage” in certain circumstances, such as where one party is going abroad for a long period of time, where there are objections from parents, or where obstacles are created by other traditional reasons. As stated by Prof., it is typically a justice of the peace or a judge who performs the “secret marriage” ceremony.

has informed me that she and consulted several friends before they decided that they wanted to have a “secret marriage”. At the advice of their friends, they understood that the “secret marriage” would be tantamount to a “commitment ceremony”, with all the ritual of a true marriage, but none of the legal consequences. According to, attended at the capital office, where he inquired about the process for arranging a “secret marriage”. His understanding was that, by asking for a “secret marriage”, he was clearly requesting a non-legally binding commitment ceremony.

Judge booked and for their “secret marriage” on. According to my client, they were not asked any questions about their capacity to marry or about whether they had cohabited at any time has also informed me that neither she nor were provided any advice or information about the ceremony that Judge was retained to perform.

* * * *

Less than six months after Judge “secretly married” and, he was held administratively liable for three acts of gross negligence for registering marriage contracts at the National Statistics Office without the required marriage licenses (Exhibit “B”). Following the decision in the case, Judge was taken off the bench for a one month period, as shown in the article attached at Exhibit “C” ( ).

Shortly after his suspension from the Filipino judiciary, Judge was tried in two separate cases: v. Judge (attached at Exhibits “D” and “E”). Judge was found liable for acts of negligence and ignorance of the law.

While we recognize that and were very naive when they relied on their friends’ original advice, and when they engaged in a “secret marriage” ceremony, signing legal documents that they did not read or understand, we submit that it would be unreasonable to penalize who has completed all the work requirements in the LCP and clarified the information on her immigration file before her application for landing has been finalized. From the
documents we have produced, it is clear that she was ill informed by a notoriously corrupt member of the Filipino judiciary.

➢ Copies of Marriage Documentation from 2002 Wedding

recalls that, on the day of her wedding, Judge secretary asked and to sign a number of papers. The judge was not present when the couple executed the affidavits, and they did not read the contents. Apparently there were a number of other couples waiting to been seen after them and, moreover, they had the understanding that the ceremony was “just for show.” After a short time, and were escorted into another room where Judge was waiting. The judge performed the ceremony, following which he asked and to execute the marriage contract.

The first documents signed by and were the documents that exempted them from the requirement of a marriage certificate. Copies are attached at Exhibit “F.” Attached at Exhibit “G” is a copy of the marriage certificate from, including the oath of solemnizing officer signed by Hon. Although the ceremony was conducted without a marriage license, allegedly pursuant to article 34 of Executive Order 209, and were not eligible for an Article 34 exemption since they had not been cohabiting for a five-year period. Moreover, Judge did not indicate (on the “Oath of Solemnizing Officer”) that he had ascertained the qualifications of the parties to marry pursuant to article 34.

We concede that and were careless in signing the affidavits without reading them. However, we take the position that Judge negligently notarized those affidavits without legal basis and without witnessing the attestation. In the decision, Judge was tried for notarizing documents prior to the issuance of licenses and also of signing the “verification portion” of “joint affidavits” when the attesting parties were not before him. We submit that this is exactly what occurred when Judge executed the affidavits that were used to register and ’s secret marriage.

Although and are now happily married and have been in a committed relationship since June 2002, we submit that they did not intend to contract a legal marriage on

➢ Copy of Marriage Certificate from

Attached at Exhibit “H” is a copy of and’s marriage certificate from . Following their wedding, returned to Canada, and attempted to obtain a NSO validated copy of their marriage contract. During this attempted registration, was
informed, for the first time, that his marriage had already been registered since 2002.
immediately sought legal advice and we promptly wrote to your office.

Evidence that there is a "widespread belief" that "secret marriages" are not legal marriages

To demonstrate that there is a belief by many Philippine nationals that "secret marriages" are not "legal" marriages, we have attached excerpts from numerous internet web logs containing inquiries by Philippine nationals who have engaged in or intend to engage in "secret marriages". As you can see, the majority of the entries ask some variation of the question: "are secret marriages legal?" (Exhibit "I").

Also attached, at Exhibit "J" is the case of Ferrer v. Balneo (CA-G.R CV No. 74631). In the Ferrer case, the Court of Appeal in Manila considered the case of a young couple who married "secretly" because they did not wish to get parental consent (which was required on the facts of their case). Like and, the appellant in the Ferrer case did not recognize that the "secret marriage" she had engaged in would have the legal consequences of a regular marriage.

At page 5 of the Ferrer decision, the court describes the facts as follows:

...at the time when they were married, they were both students and that when they were still dating, respondent wanted to have sex with her but petitioner told him that she would not go to bed with him until they were married; that respondent induced her to marry him and prepared for what she thought to be a non-binding "secret marriage"; that respondent arranged everything including the applications for the wedding as well as the time and the place for it; that all she had to do was to appear with him before what she thought to be a minister solemnizing their marriage and to sign the prepared marriage contract; that she does not know anything about any advice or consent being secured from their parents; that as far as she knows, she never secured her parents' consent to her marriage as it was a secret marriage and it was not supposed to be known to any one especially her parents except to their purported witnesses [emphasis added].

It is important to consider that, in the 26-page Ferrer decision, the Court of Appeal did not cast any doubt or even question Ms. Ferrer's assertion that she believed her "secret marriage" would not be legally binding, even in spite of the fact that the ceremony was performed before a solemnizing officer in the presence of witnesses.

Was there a marriage license for the 2007 wedding?

As you can see from and's 2007 marriage certificate, no marriage license was obtained at the time of her 2007 marriage, and an exemption was granted pursuant to Article 34, for the following reasons:

travelled to the Philippines on or about It was and's intention to celebrate their wedding in the Philippines during 's visit to the Philippines. Unfortunately, within days of her arrival in the Philippines, 's father became extremely ill and ultimately died on.
Following his death, and went to the municipal registry to inquire about getting a marriage license. According to , the office told them that it would take some time to process the paper, and that they would not likely have the document ready before their intended wedding date. Because the clerk knew 's family and knew and had been in a committed relationship for more than five years, he advised them to sign an affidavit like the one that they signed at their "secret marriage" ceremony. This enabled and to marry without a marriage license on 27 January 2007. Unfortunately we have been unable to obtain copies of the affidavits sworn in 2007 given the time constraints.

> Conclusions

We submit that 's misrepresentation was an "honest mistake". This is evident in the fact that clarified the information, even though she had already been invited to pick up her landing document. I sincerely believe that had no intention of misrepresenting her status to CIC, but was merely ignorant and somewhat cavalier about the process of documenting a marriage in the Philippines. As stated at Section 9.3 of Enforcement Manual 2, it is necessary to consider that "honest errors and misunderstandings sometimes occur". We ask that 's representation be assessed in the appropriate cultural context.

In any event, if you find that has misrepresented her status, which we specifically deny, I ask that you consider the H&C factors that we enumerated in our previous letter. In light of 's long work history and significant establishment in Canada, we submit that it would impose undeserved and disproportionate hardship if she is denied landing in Canada at this time. Since it is not financially viable for to live and work in the Philippines, Canada presents her only hope for a sustained and reunited future with .

If you require any further information, please do not hesitate to contact me at the address on file.

Yours truly,
WEST COAST DOMESTIC WORKERS' ASSOCIATION
Per:

Deanna Okun-Nachoff
Barrister and Solicitor

C.C.: Ms. —
30 January 2008

Citizenship and Immigration Canada
1148 Hornby Street
Vancouver BC V6Z 2C3

Dear Officer,

Pursuant to my letter dated 14 September 2007, I am writing on behalf of my client, Ms. [Redacted]. The purpose of this letter is to inform you that Ms. [Redacted] was recently diagnosed with breast cancer. We have attached a letter from Ms. [Redacted], oncologist, which contains her opinion that Ms. [Redacted] is likely to make a "full recovery" following chemotherapy treatment (which is scheduled to conclude in mid-April) and 4-6 weeks of radiation treatment.

We are not currently in a position to make substantive submissions regarding Ms. [Redacted]'s ability to comply with s.38(1)(c) of the IRPA, since she has only been recently diagnosed and will be in active treatment for another few weeks. However, we ask that consideration be given to paragraph six of Operational Bulletin 021, which gives Officers jurisdiction to grant a s.25 exemption of their own initiative where a new medical condition arises on a pending H&C application. This will be particularly relevant if you have already agreed to grant approval-in-principle based on the materials we have previously filed. As you will recall, we sought landing on H&C grounds by letter dated 24 March 2007, and again in our letter dated 14 September 2007.

We would be extremely grateful if you could update us regarding the progress of your investigation, and would be more than willing to provide any information you might require. I can be reached by telephone at 604.669.6452, and am already on record as representative.

Yours truly,
WEST COAST DOMESTIC WORKERS' ASSOCIATION
Per:

Deanna Okun-Nachoff
Barrister and Solicitor