



October 26, 2016

Via email: CIMM@parl.gc.ca

Borys Wrzesnewskyj, M.P.
Chair, Citizenship and Immigration Committee
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

Dear Mr. Wrzesnewskyj:

Re: Family Reunification

The Immigration Law Section of the Canadian Bar Association (the CBA Section) appreciates the opportunity to participate in the Citizenship and Immigration Committee's study of family reunification.

The CBA is a national association of over 36,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. The CBA Section comprises lawyers with an in-depth knowledge of citizenship and immigration law issues, including legislative changes, administration and enforcement.

The CBA Section supports the principle of family reunification as an objective of the *Immigration and Refugee Protection Act* and agrees with making family reunification a priority, as stated in the Immigration, Refugees and Citizenship Canada (IRCC) Report on Plans and Priorities 2016-17.

1. The quota system and its impact on family reunification

The economic, social and cultural benefits of family reunification have been underestimated, particularly when the analysis of these benefits includes multiple generations.

The results of restricting quotas for family class immigrants includes unacceptably long processing times, emotional hardship due to the extended separation of families, and impairment of Canada's competitiveness as a potential destination for immigrants. For example, the processing time for sponsored children adopted from Haiti is currently 41 months. During this time, children may be separated from their adoptive parents for extended periods, or the parents may be forced to abandon Canada to live with their child overseas, which may make them ineligible to sponsor the child's application.

The number of family class immigrants should not be increased to the detriment of economic or humanitarian class immigrants. However, the CBA Section recommends that the total number of immigrants be increased to at least 360,000, representing only 1% of Canada's estimated population of 36 million in order to promote family reunification using the quota system.

2. Super Visa Program as an alternative to Parent and Grandparent Program

The CBA Section commends the Government of Canada for the Super Visa Program. Since the program was established in December 2011, the intake of sponsorship applications for parents and grandparents through the program has increased to 10,000 a year in 2016-17. However, the Super Visa Program should not be viewed as an alternative to the Parent and Grandparent Sponsorship Program, and we would have concerns if this important pathway to permanent residence for parents and grandparents were eliminated.

While the Super Visa Program has alleviated some pressures on Canadian families by allowing temporary entry of parents and grandparents, there have been concomitant intake pauses, as well as unreasonable inventories and processing times through the Parent and Grandparent Sponsorship Program. We understand that the current inventory of applications in the parents and grandparents category may approach 80,000, and that processing times for these applications are at least three years, with many spanning five years or more.

The government should take action to increase the effectiveness of immigration programs for parents and grandparents by reducing inventories and unreasonable processing times. More reasonable service levels might reflect 25,000 admissions per year, and processing times not exceeding two years. This would afford families an opportunity to plan for reunification with immigrating parents and grandparents in Canada.

Another significant challenge for many Super Visa applicants is the requirement of health insurance coverage while in Canada. The reality is that few Canadian providers offer insurance to this group of immigrants and, if it is attainable, the cost of this insurance is prohibitive for many – especially for older applicants and those with pre-existing medical conditions. The CBA Section urges the government to consider identifying alternatives for this health insurance coverage, such as comparable insurance from approved providers in jurisdictions outside of Canada.

3. The value of parent and grandparent immigration for families and for Canada

There is insufficient empirical data to support the claim that parents and grandparents represent a significant potential cost burden for Canada. Yet we understand that this assumption has, until recently, formed the basis of immigration policy reforms, including the marked decline of the Parent and Grandparent Sponsorship Program over the last several years.

Recent studies indicate that the net positive impact of the non-economic contributions of parents and grandparents on the economy, including child care, assistance with family business activities, emotional support, cultural education, volunteerism, maintenance of social cohesion, and housekeeping – in addition to the financial resources they may contribute – is often overlooked.

Parents and grandparents are essential to the success of family reunification in Canada. Policies addressing immigration for parents and grandparents should be based on a holistic view of Canadian families and communities, including the benefits of inter-generational families and the value of economic, social and cultural contributions.

4. Obstacles to entry into Canada for spouses and partners

There are many obstacles to temporary entry into Canada and permanent residence for the spouses and partners of Canadians. These obstacles include lack of recognition for foreign educational and professional credentials, delays in processing open work permits and spousal sponsorship applications (a spouse sponsored from within Canada may not receive an open work permit for 6-12 months), and ineligibility of sponsored spouses making applications from outside of Canada to obtain work permits. They also include the inconsistent and often unexplained refusal of applications for temporary resident visas (even when sponsor and spouse can both demonstrate the ability to leave Canada if the spouse's application for permanent residence is refused).

Obstacles for spouses and partners seeking permanent residence include unreasonable and inconsistent assessments of: cohabitation for common law partners; genuine conjugal relationships for partners and spouses who are unable to cohabit due to religious, cultural, economic, legal, immigration or other reasons; and intent to return to Canada for sponsors of foreign partners and spouses. For example, LGBT couples may not be able to live together or demonstrate that they live together based on cultural norms and fear of persecution. Other obstacles include long wait times for criminal rehabilitation for foreign spouses with minor convictions (such as reckless driving), as well as the lack of a right to appeal negative decisions on applications for permanent residence made within Canada.

The net effect of these obstacles is that spouses can be separated for years, with significant detriment to their relationships, as well as to their ability to establish themselves and contribute to Canada in meaningful ways. In particular, spouses who cannot obtain open work permits, and are only eligible for temporary entry to Canada as visitors may experience considerable hardship. For example, they may be limited to a single entry or subject to detailed examination on subsequent re-entries to Canada, and may also be required to make ongoing applications to maintain their status. They may also be prevented from obtaining a driver's license or studying (due to high tuition rates for international students), and have limited access to medical insurance coverage until they are granted permanent residence. As a result, spouses may not be able to plan and start a family while immigration status is in limbo. In addition, the Canadian sponsors of spouses and partners may be deterred, delayed or prevented from returning to Canada.

The CBA Section believes that many of these obstacles can be addressed through IRCC officer training and processing improvements, as well as through increased consistency and transparency in decision making and access to appeals. In particular, the current delay of about 18 months associated with the Immigration Appeal Division can severely impact spouses and partners seeking admission to Canada and should be reduced. In addition, partners and spouses who apply for permanent residence from within Canada should be able to appeal a negative decision. Of note, the open work permit pilot project for spouses sponsored from within Canada, which expires in December 2016, has proven to be highly beneficial and resulted in applications being processed within four months. It should be enhanced to further reduce processing times and made a permanent program.

We also recommend the repeal of subsection 117(9)(d) of the *Immigration and Refugee Protection Regulations*, the application of which can result in permanent separation from family members. The provision is overbroad, capturing many situations that occur due to innocent mistakes, such as confusion over terms such as 'common law' or lack of knowledge of a living dependent. Sections 40 and 127 of the Act, dealing with misrepresentation, can be used where failure to disclose family members is due to fraud. The only relief from R. 117(9)(d) is a

humanitarian and compassionate application, a discretionary, lengthy process from which there is no right of appeal.

5. Criteria for sponsoring dependent children, adopted children, siblings and other relatives

The CBA Section commends the government on reversing the previous reduction in the age of dependent children from under 22 to under 19. This will reduce a significant impediment to permanent residence for children of immigrants who remain physically, emotionally and financially dependent on their parents. We look forward to it coming into effect without delay, and urge the government to consider transitional provisions that would enable dependent children who would otherwise have been eligible since the change in August 2014 to apply for permanent residence in Canada.

We recommend that the government also consider reversing the decision to remove the exception for dependent children aged 22 or older who are full time students and remain financially dependent on their parents. In addition, children of successful refugee applicants should be eligible for inclusion as dependent children, notwithstanding their birth in a country that would otherwise make them ineligible, such as the United States. This would be a fundamental step toward reunification.

Routine applications for citizenship for adopted children currently face lengthy processing times. These delays create financial hardship for families, and delays in their ability to reunify in Canada, which can have a severe impact on the child's development. The CBA Section recommends greater flexibility and accommodation in the sponsorship of adopted children, as well as improved coordination with Canadian provincial authorities. It should be possible to obtain a temporary resident visa for an adopted child who is waiting for an application for citizenship to be processed. In addition, we recommend a review of the circumstances in which humanitarian and compassionate considerations may warrant the approval of applications, such as situations where the relatives of abandoned children cannot be located.

There is currently very limited ability for anyone to sponsor siblings applying to come to Canada. A requirement for sibling sponsorship is that the sponsor's parents must both be deceased. The government may wish to consider the benefits of allowing a sibling to sponsor another sibling at a younger age, while they are most able to integrate and contribute to the Canadian economy. Another approach could be to award points under economic programs for siblings and other relatives in Canada, provided there is a demonstrable connection and resulting enhanced ability to establish and contribute to the Canadian economy and society.

6. Age and financial thresholds for sponsorship

The CBA Section recommends that the age and financial thresholds for sponsorship be reviewed. The government may wish to consider lowering the age threshold, and also look at circumstances where it might be reasonable for a child born in Canada who is under the age threshold to sponsor a parent in Canada as a temporary resident, for example where the child is accepted into Canada as a refugee.

The low income cut-off (LICO) for sponsorship is currently the same across Canada regardless of the location of the sponsor, and for sponsors of parents and grandparents, a higher financial threshold of LICO plus 30% is required. The CBA Section recommends that the financial threshold should reflect the actual costs of living in different locations. This would better reflect the ability of an individual to sponsor and support an additional family member in Canada. In

addition, for parents and grandparents, additional factors should be taken into account, such as the applicant's demonstrated ability to support themselves in Canada, their financial assets, and their non-economic contributions.

7. Processing times for sponsorship, citizenship and other visas

Current processing times are often unacceptably long, and accountability for service standards appears to be inconsistent across Canadian visa offices. We recommend that the government consider implementing a processing time standard of up to one year from the date an application is complete, which would apply consistently across all visa offices. This standard would provide certainty to applicants and their Canadian sponsors, as well as promote family reunification. Particular attention should be paid to applications for permanent residence by family members sponsored by refugees in Canada.

The CBA Section supports the principle of family reunification as an objective of the *Immigration and Refugee Protection Act*. Recognizing the economic, social and cultural benefits of family reunification, it should be a priority for Immigration, Refugees and Citizenship Canada. We appreciate the opportunity discuss our comments and recommendations in relation to family reunification with the Committee, as well as to provide any clarifications the Committee requests.

Yours truly,

(original letter signed by Kate Terroux for Vance P. E. Langford)

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