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September 8, 2016

Via email: Minister@cic.gc.ca

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

Dear Minister McCallum:

Re: Implied Status and Conditional Permanent Residence

On May 13, 2016, members of the CBA Immigration Law Section (the CBA Section) met with Immigration, Refugees and Citizenship Canada (IRCC) officials in Ottawa. To further that discussion, I would like to raise three issues for your consideration: amending rules surrounding implied status (IS); revisiting restoration of IS; and changing enforcement by the Canadian Border Security Agency (CBSA) of the provisions governing conditional permanent residence.

Amending Rules Relating to Implied Status (IS)

The CBA Section recommends rules relating to implied status be amended to allow temporary residents to retain implied status (IS) when the person leaves Canada.

Immigration and Refugee Protection Regulations (IRPR) s. 186(u) and policy about IS state that a temporary resident can benefit from IS after the expiry of a work or study permit if the temporary resident filed an extension application before expiry and remains in Canada. These conditions force a temporary resident holding IS who is required to travel outside of Canada to choose between remaining in Canada until a decision is made on the application or losing the ability to work or study.

Departure from Canada by a foreign national does not create a presumption the person no longer wishes to pursue the work permit extension application. Many are professionals who are foreign nationals required by employers to travel outside Canada to carry out critical employment functions. A person under IS may need to leave Canada to attend to important family matters. They have no choice but to apply for a work permit at the port of entry on returning to Canada because they cannot wait until approval of their work permit extension before recommencing work. This additional application burdens professionals who filed an extension online. This burden is greater

for citizens of countries requiring a Temporary Resident Visa (TRV) because a new TRV in addition to a work permit is required to return. Also, these citizens do not have the benefit of applying at a port of entry except in limited circumstances, as those seeking re-entry to Canada following a visit solely to the United States or St. Pierre and Miquelon. The additional application unnecessarily increases the workload of CBSA and strains resources that could be allocated to higher-priority and higher-risk travellers. This added pressure on CBSA staff could be relieved by reducing the number of duplicate applications.

Amending the rules governing IS would facilitate the return of a foreign national who is required to travel outside Canada during IS designation. These amendments would strike a better balance between the needs of a professional and the interests served by IS, by not unduly disrupting the day-to-day lives of foreign nationals who have every intention to continue their employment in Canada. These amendments would also benefit IRCC and CBSA by reducing duplicate applications.

Revisiting the Rules Surrounding Restoration of Status

The CBA Section recommends IRPR s. 182 be amended to state that if restoration of status is granted, the foreign national is deemed to have held valid status in Canada retroactive to the day after the expiry of the work permit. Foreign nationals should not be penalized with the loss of the ability to work or study in the event they (i) fail to submit an extension application by the expiry date of their work or study permit, or (ii) submit an extension application in good faith and in advance of expiry but inadvertently omit a required document and the application is subsequently denied for incompleteness.

A foreign national does not hold temporary resident status, and specifically IS, after the expiry of her work permit, even if she applies to restore her status within 90 days of expiry. The foreign national's right to remain in Canada is re-established by an approval of the application to restore IS. This process does not align with the spirit of restoration itself, which is to provide a grace period to foreign nationals who often have simply forgotten to renew their work permit before expiry.

We propose that the amendment also state that during the restoration application process, the foreign national holds a status akin to IS to allow her to continue working and prevent enforcement action against her. Additional benefits include reducing a gap in her provincial health coverage, removing potential waiting periods once her status is restored and applying the restoration period time toward her eventual application for permanent residence.

Foreign nationals, employers and counsel alike have been pleased to see the reduction in average processing times for extension applications over the past several months. Reducing processing times at CPC Vegreville and permitting applicants to submit missing documents within a reasonable time before an application is refused for incompleteness would assist this progress. We encourage reducing online application processing times as IRCC's next priority.

CBSA Enforcement of Provisions Relating to Conditional Permanent Residence

The CBA Section applauds the Government's decision to repeal the provisions on conditional permanent residence status that came into effect in October 2012. This is a step in the right direction and we understand that regulatory changes take time to come into force. As we wait for these changes, we ask that you and Minister Goodale put forward a joint policy for CBSA to halt or

suspend any further enforcement against persons on conditional permanent residence status on the grounds of a potential or alleged violation.

CBSA's position is that they are obligated to enforce these provisions until they are repealed. Individuals continue to be adversely impacted by these rules that are unfair and in conflict with Canadian values. Sponsored individuals subject to conditional permanent residence are a vulnerable population. They face serious uncertainty over whether action will be taken against them.

We thank you in advance for considering these three matters and look forward to continuing to work with you.

Yours truly,

(original letter signed by Kellie Krake for Vance P. E. Langford)

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

cc: The Honourable Ralph Goodale, P.C., M.P.
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