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Via email: Bogdan.Sultana@cic.gc.ca

Bogdan Sultana
Assistant Director, Economic Team
Status, Pilots and Economic Programs Division
Immigration, Refugees and Citizenship Canada
360 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Mr. Sultana:

Re: Improving New Temporary Resident to Permanent Resident Pathway Program

The CBA Immigration Law Section (CBA Section) is pleased that Immigration, Refugees and Citizenship Canada (IRCC) has introduced more digital options to submit immigration applications. We write to offer constructive feedback on the recent implementation of the Temporary Resident (TR) to Permanent Resident (PR) Pathway program (the Program).

The CBA is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,200 members across Canada practising in all areas of immigration and refugee law.

The Program is a temporary public policy that facilitates processing of immigrant visas for certain types of applicants between May 5, 2021 and November 5, 2021, including many essential workers, recent graduates and French-speaking people in Canada. The CBA Section's comments and recommendations to improve the Program are based on the experiences of its members.

Instructions in Information Package

The CBA Section has significant concern on the roll-out of the Program, particularly the last-minute release of information needed to access it. For example:

- a) the application guide was released only 24 hours before opening the intake portal; and
- b) there was a lack of transparency, leading up to the opening of the intake portal, on what documents were required for each stream.

The Program was announced on April 14, 2021 by the Minister and was released just three weeks later, on May 5, 2021. No substantive information was available to assist applicants until 24 hours before the intake portal opened. Three weeks was a very short time for applicants to learn about the requirements of the Program and to prepare their documents. Those without the necessary supporting documents, such as a valid language test, medical examination, police certificates and formal document translations were at a significant disadvantage.

Further, IRCC did not give adequate instructions to applicants on how to proceed if unable to secure required documents (often for reasons beyond their control) before the Program opened, except with respect to the police certificates and immigration medical examination. CBA Section members report that some applicants in remote British Columbia communities were unable to obtain permanent resident photos due to COVID-19 travel restrictions and were unsure what to do in the circumstances.

CBA Section members have reported that many eligible candidates were unable to apply because they could not get the time off work to prepare and submit their applications and because authorized representatives were not allowed to submit an application on a client's behalf. This is particularly concerning given that the Canadian graduates stream closed less than twenty-four hours after it opened.

The capacity of applicants to adequately prepare their applications was undermined by the lack of available information when the intake portal opened. Applicants sought guidance where they could find it, through sources like Twitter, and the information was inconsistent. CBA Section members observed that incorrect information about payment instructions and digital photo requirements resulted in effort spent collecting unnecessary documentation and a significant amount of distress and confusion.¹ Our recommendations are intended to improve the process for future program rollouts.

Recommendations

1. Release application package with a reasonable amount of time in advance of the program opening, to provide applicants with an equal opportunity to apply.
2. Provide clear and consistent application instructions through one medium.

Enable Counsel to Submit Client Application and Receive Visa Office Correspondence

IRCC should enable counsel, through the PR Representative Portal, to submit their client's application electronically and to receive all correspondence about the client's application directly from IRCC, including acknowledgment of receipt (AOR) and requests for additional documentation.

¹ While not a problem specific to the Program, standard application questions are posed differently on temporary residence and permanent residence application forms and multiple questions are often combined, rather than posed in plain language one at a time. For example, IMM 1294 (10-2019) Page 4 at Box 2 (b) reads, "*Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory?*" IMM 5669 (06-2019) Page 1 at Box 6 (d) reads, "*been refused refugee status, an immigrant or permanent resident visa (including a Certificat de selection du Quebec (CSQ) or application to the Provincial Nominee Program) or visitor or temporary resident visa, to Canada or any other country or territory?*"

The same issue occurs in French : IMM 1294 (10-2019) Page 4 at Box 2(b) reads, "*Vous a-t-on déjà refusé un visa ou un permis, interdit l'entrée ou demandé de quitter le Canada ou tout autre pays ou territoire?*" IMM 5669 (06-2019) Page 1 at Box 6 (d) reads, "*avez déjà reçu le refus du statut de réfugié, un visa d'immigrant ou de résident permanent (incluant un Certificat de sélection du Québec CSQ) ou demande au Programme des candidats des provinces) ou de visiteur ou de résident temporaire pour aller au Canada ou dans tout autre pays ou territoire ?*"

An applicant refused a study or work permit may interpret Question 6(d) of the IMM 5669 in English or in French as not applying to them as there is no mention of the word "permit", only visa. The terms study and work visas are not prevalent in either language on the IMM 5669 form and can lead to confusion for applicants.

The immigration application is a legal document that must be completed in accordance with legal requirements. If applicants are denied the benefit of legal advice, applications may be submitted with serious flaws, jeopardizing the applicant's chance of success. Inconsistencies have been reported with some authorized representatives receiving the AOR directly and others finding out (sometimes too late) about the AOR from the client. Missing email notifications from IRCC can result in a client's application being refused. An otherwise credible and strong application might be refused as a result of missing a deadline for a requested document. Unnecessary processing and federal court litigation will likely result.

Solicitor-client relationships are often longstanding and involve a significant amount of trust. Limiting lawyers' access to immigration platforms limits their ability to effectively advise and represent clients and to maintain the solicitor-client relationship.² Many applicants, such as the elderly and those located in remote areas, have limited access to technology and depend on counsel's assistance with digital immigration and citizenship applications.

While representatives can potentially assist clients with the new platforms in the background, the *Immigration and Refugee Protection Regulations* prohibit the use of concealed representatives for certain types of applications. Users of a single-user digital platform should not be expected to share their personal login information with a third party, even if it is a trusted representative. The information required to set up an immigration portal account is personal and requires applicants to keep their login information private.

Lawyers are subject to rules of professional responsibility for preservation and protection of electronic passwords, but these rules do not apply to consultants. The roll-out of new platforms will encourage third parties, not bound by the same ethical obligations as lawyers, to ghost applications without the same oversight. For a client and representative to "share" an online account would also create logistical challenges. In contrast, the IRCC Representative Portal ensures that the high volume of communications and submissions are protected and preserved by the representative. The success of this portal demonstrates the importance of including representatives in immigration and refugee processes.

By excluding representatives from these processes, IRCC places applicants in a difficult position. Digital platforms were designed to reduce processing times and create efficiencies. However, applicants are forced to choose between the complete services provided by a representative, with inevitably slower processing of a paper application, or using an online process designed for self-represented applicants.

Marginalizing the role of representatives breaches the right of individuals to be represented by counsel in legal processes that have significant long-term implications. Applicants have received letters from IRCC alleging misrepresentation as a result of answers given to questions on forms that can be confusing. Findings of misrepresentation can affect an applicant's other immigration applications, admissibility and the future admissibility of their family members. Many of these situations can be avoided if representatives are able to assist applicants and provide valuable user feedback to IRCC through that process.

² *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 (CanLII), [2015] 1 SCR 401, <<https://canlii.ca/t/gg977>> at para. 83: A client must be able to place "unrestricted and unbounded confidence" in his or her lawyer; that confidence which is at the core of the solicitor-client relationship is a part of the legal system itself, not merely ancillary to it: *Smith v. Jones*, 1999 CanLII 674 (SCC), [1999] 1 S.C.R. 455, at para. 45, citing with approval, *Anderson v. Bank of British Columbia* (1876), 2 Ch. D. 644 (C.A.); *McClure*. The lawyer's duty of commitment to the client's cause, along with the protection of the client's confidences, is central to the lawyer's role in the administration of justice.

Encouraging applicants to proceed without legal representation is procedurally unfair and can amount to a breach of fundamental justice. It can lead to prejudicial outcomes particularly for vulnerable clients who also face cultural, technological and language barriers. It will disproportionately affect racialized applicants who are more likely to face these barriers to accessing justice.

Recommendation

3. Allow lawyers retained by the applicant to submit an application and receive all correspondence about the application directly from IRCC via the PR Representative Portal.

Expedited Review and Completeness Check

Completeness checks are conducted within several months from receipt of the application. Should an application be returned as incomplete after that time, the applicant who must resubmit the application has lost valuable time and another eligible applicant who could have applied with a complete application experiences a lost or delayed opportunity to obtain permanent residence. Based on the limited availability of the Program, applicants who submit incomplete applications may even lose the opportunity to re-apply once the stream spaces have been filled.

Completeness checks must be undertaken more promptly upon receiving an application. This can be accomplished by an officer completing a preliminary review before the matter is passed on to a secondary review officer, similar to the intake process applied by Employment and Social Development Canada in reviewing Labour Market Impact Assessment applications. In this way, an incomplete application can be returned more swiftly allowing the eligible candidate to correct the deficiency and reapply within a reasonable time. We also encourage IRCC to explore how AI might be used to conduct routine parts of completeness checks more efficiently. Consideration of how AI might be leveraged (in the Program and other contexts) should include stakeholder consultation.

Given limited availability of spaces and the new, unfamiliar criteria of the Program, applicants should be given as much opportunity as possible to respond to requests for additional information or documents. Within a specified and reasonable time, IRCC should place the application on hold so the applicant has the opportunity to complete the application. During this time, the application processing fee should remain with IRCC to avoid redundant efforts on reapplication.

We also recommend that new spaces be created for each application ultimately rejected for incompleteness or ineligibility, to allow for new applications to be submitted before the end of the Program in November 2021.

Recommendations

4. Conduct a preliminary review before passing the matter to a secondary review officer. Consider how AI might be used to conduct routine parts of completeness checks.
5. Allow applicants a specified and reasonable time to respond to requests for additional information or documents.
6. Add new spaces for the number of rejected applications.

Bridging Open Work Permits

Bridging work permits for Program applicants were initially prohibited even though many applicants are considered “essential workers” under the eligibility requirements. Other types of economic streams expressly allow applicants to apply for a bridging work permit. There is no basis for differentiating applicants to the Program.

While the availability of a bridging work permit for Program applicants was eventually announced on July 4, 2021, this late decision caused applicants to flood the essential non-health care worker stream, which quickly filled up. This flood of applicants demonstrates that a bridging work permit is an important consideration for applicants, many of whom depend on a work permit to support themselves and their families while they wait for their PR applications to be processed.

Recommendation

7. Make bridging work permits available to all Program applicants who pass the initial review for application completeness.

Facilitate Follow-up Submissions

CBA Section members report that many applicants were unable to include required documents with their applications because of the short notice given by IRCC about the requirements and exacerbated by COVID-19-related service and travel disruptions. Further, IRCC's fee portal crashed on the first day of application intake due to the immense demand for payment processing. This affected the applicant's ability to upload a receipt as part of an application, and file numbers were often not issued for long periods after the initial application was submitted, making it impossible for the applicant to include that information when trying to add documents.

We recommend that IRCC accept the follow-up submission of documents, via the PR Representative Portal, where not all documents could be uploaded initially for reasons beyond the applicant's control. To facilitate application processing, immigration officers in other programs regularly accept documents where clients or their representatives are proactive in providing them prior to receiving instructions by the visa office. The same should apply equally to the Program.

Recommendations

8. Accept follow-up submission of documents, via the PR Representative Portal, where not all documents could be uploaded initially.
9. Upgrade IRCC payment portal to withstand high demand and/or encourage applicants to generate payment receipts beforehand due to system limitations.
10. Issue a file number promptly so applicants can cross-reference to their application when trying to add documents.

Concurrent Processing for Legal Dependents Located Overseas

With easing of COVID-19 restrictions, Confirmation of Permanent Residence-holders (COPR) can travel to Canada as of June 21, 2021 and PR applications for their overseas dependents should no longer be placed on hold. Family reunification is an objective of the *Immigration and Refugee Protection Act* (section 3). The principal applicant normally works in Canada. A dependent spouse and children may reside thousands of miles away, with the family facing emotional and financial challenges given the need to finance two separate homes. Family members are separated for long periods, with negative impacts on applicants. The Program should recognize the importance of concurrent processing of all family members, including overseas family members.

Recommendation

11. Recognize the importance of concurrent processing of all family members, including overseas family members. Every applicant should have the option to process all dependent family members at once.

Expressly Permit Applications for More Types of Self-Employed People

Self-employed people are important drivers of our economy and have helped Canadian citizens and permanent residents meet their basic needs throughout the pandemic. We recommend that the Program expressly permit applications from more types of self-employed people.

The current Program states that eligible work experience “does not include self-employment, unless the applicant is working as a medical doctor in a fee-for-service arrangement with a health authority.” As a result, many types of self-employed people are unable to benefit from the Program.

We appreciate that it can sometimes be difficult to verify self-employed work experience, however many self-employed people can easily prove the required work experience. For example, food delivery drivers are generally considered self-employed workers even though they are part of the essential non-health care industry. These self-employed workers have been critical throughout the pandemic, especially when restaurants were closed for in-person dining but open for take-out and delivery. They can usually provide ample documentation issued by food delivery organizations and restaurants in support of their previous or current work experience. Another example is long-haul truck drivers who are owner-operators and should be able to verify their work experience.

It is unfair to omit categories of self-employed people from the Program. We recommend that any person who is an owner-operator and can document their work experience ought to be included in this category and eligible to apply under the Program.

Recommendation

12. Permit applications for more types of self-employed people who can verify their work experience.

Conclusion and Summary of Recommendations

The CBA Section is pleased that IRCC has implemented changes to facilitate the transition to permanent residence for workers and students in Canada. Our suggestions for improving the Program are summarized below. Please let us know if you have any question or require additional information.

1. Release application package with a reasonable amount of time in advance of the program opening, to provide applicants with an equal opportunity to apply.
2. Provide clear and consistent application instructions through one medium.
3. Allow lawyers retained by the applicant to submit an application and receive all correspondence directly from IRCC with respect to the application, via the PR Representative Portal.
4. Conduct a preliminary review before passing the matter to a secondary review officer. Consider how AI might be used to conduct routine parts of completeness checks.
5. Allow applicants a specified and reasonable period of time to respond to requests for additional information or documents.
6. Add new spaces for the number of rejected applications.
7. Make bridging work permits available to all Program applicants who pass the initial review for application completeness.
8. Accept follow-up submission of documents, via the PR Representative Portal, where not all documents could be uploaded initially.

9. Upgrade IRCC payment portal to withstand high demand and/or encourage applicants to generate payment receipts beforehand due to system limitations.
10. Issue a file number promptly so that the applicant can cross-reference to their application when trying to add documents
11. Recognize the importance of concurrent processing of all family members, including overseas family members. Every applicant should have the option to process all dependent family members at once.
12. Permit applications for more types of self-employed people who can verify their work experience.

Yours truly,

(original letter signed by Sarah Mackenzie for Kyle Hyndman)

Kyle Hyndman
Chair, CBA Immigration Law Section