



THE CANADIAN
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April 14, 2023

Via email: Daniel.mills@cic.gc.ca

Daniel Mills
Senior Assistant Deputy Minister, Operations Sector
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa ON K1A 1L1

Dear Mr. Mills:

RE: Home Child Care Provider Pilot and Home Support Worker Pilot

We write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to comment on the Home Child Care Provider Pilot and Home Support Worker Pilot programs.

The Canadian Bar Association (CBA) is a national association of 37,000 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 is comprised of over 1,200 lawyers, practicing in all aspects of Canadian immigration law and rendering professional advice and representation in the Canadian immigration system to clients in Canada and abroad.

The 5-year Home Child Care Provider Pilot and Home Support Worker Pilot programs implemented in 2019 addressed many of the problematic issues with previous caregiver programs. Both programs are set to expire in June 2024 due to the regulations' five-year limit. The CBA Section was pleased with the removal of the Labour Market Impact Assessment (LMIA) requirement, the implementation of sector-specific open work permits and accompanying permits for spouse and dependent children, and the establishment of a clear route to permanent residency from the outset for qualifying applicants and their dependents.

More recently, we were pleased that the work experience requirement for caregivers to qualify for permanent residence was reduced from 24 months to 12 months. This change allows caregivers and their families in Canada to settle more quickly.

However, the Caregiver Pilot programs are not delivering the results that Canadians anticipated when they were introduced. The CBA Section believes this is due to the limited size of the intake group¹ and the extremely lengthy processing time, particularly for receipt of the initial work permit in the ***Gaining experience*** categories—i.e. applicants who are not yet working in Canada. As of today's date, the processing times are listed as 35 months for the Home Child Care Provider Pilot and 34 months for the Home Support Worker Pilot. Canadian private household employers and the foreign nationals they seek to employ simply cannot wait this long.

The Canadian private household employers seeking to use this program almost always require a caregiver as soon as possible. They are young parents needing a nanny for infant children so that they can return to work. They are the adult children of elderly parents who wish to stay in their homes but require round-the-clock care. With the current processing times, the infants requiring care will be school-aged when the caregiver is approved to come to Canada. Elderly parents may have died. CBA Section members know of cases where applications were withdrawn during processing for these reasons, as the care need ended while the application was still pending. The purpose of the program is defeated if care is not available when needed.

The need for this program is only increasing. Given our aging population, the rise in the number of working parents, and current domestic labour shortages in caregiving occupations, the demand for foreign caregivers is high and growing. As stated in a February 10, 2023, Immigration, Refugees and Citizenship Canada (IRCC) news release:

Fifty years ago, there were seven workers for every retiree in Canada. Today, that number is closer to three, and if Canada stays on its current trajectory, in the next 10 to 15 years, that ratio will drop to two workers for every retiree.²

The foreign caregiver programs are vital in this demographic context. The programs have excellent potential to promote economic growth and societal well-being. But Canadian families cannot wait three years for a caregiver to arrive. Our CBA Section members consult frequently with families who are interested in the programs, but opt not to pursue an application when they learn that it will take years for the caregiver applicant to begin working in Canada.

We appreciate that the more extensive background checks associated with permanent residence applications are partly responsible for the lengthy processing times. However, other types of permanent residence applications are processed in six months or less. Given the intake caps and the relatively small number of applications accepted into processing each year, we submit that a processing standard of 6 months for initial work permit issuance in the ***Gaining experience*** categories would be reasonable-and would allow the programs to better-serve the needs of Canadian families.

A second issue we raise is the cap on the number of applications accepted in the Home Child Care Provider Pilot. We understand that all 1,500 online application spaces in the ***Gaining experience*** category of the Home Child Care Provider Pilot were taken within hours of the program opening on January 1st, 2023. Given the very high demand and clear labour market need, we recommend increasing this cap if the programs are renewed beyond the initial five-year period. We suggest that new Ministerial Instructions allow for amending the caps based on demographic demand.

¹ See Immigration and Refugee Protection Act (S.C. 2001, c. 27), s. R14.1(2) and 14.1(9).

² IRCC, Canada to reduce work experience requirements for caregivers and provide pathways to permanent residence, 2023, [online](#).

RECOMMENDATIONS

1. The processing standard for the initial work permit in the ***Gaining experience*** categories should be under 6 months. Adequate resources and staff must be allocated to ensure that this standard is met for the processing of most files.
2. In 2018, our Section recommended the elimination of the LMIA process for caregivers given that LMIA-based work permits create power imbalance and increase the risk of caregiver exploitation. Employer-specific work permits makes caregivers dependent on the listed employer(s) and prevent them from changing employers in situations of early termination or poor working conditions. We were pleased when this change was implemented. However, if it is not possible to significantly reduce processing times for receipt of an initial work permit via the Caregiver Pilot Programs, we recommend removing the bar preventing private household employers from requesting an LMIA for a caregiver who is outside Canada. This would at least give employers an interim option to engage a caregiver in a more reasonable timeframe and meet their immediate needs. LMIA-based work permits can currently be processed quickly given that home child care providers and home support workers are included on IRCC's list of occupations eligible for priority processing. If the LMIA process is re-opened as an option, we recommend that the advertising requirement be waived given the well-recognized domestic labour shortage for in-home caregivers. The Canadian employer should simply demonstrate the need for a caregiver, the financial capacity to pay, and the commitment to comply with all requirements in terms of rate of pay, working conditions, accommodations, etc.
3. Should the Pilot Programs be renewed beyond the initial five-year period, we recommend that any future intake caps for foreign caregivers reflect present needs in the Canadian labour market, and that the Ministerial Instructions allow for amending the caps based on demographic demand. We understand that this cap is a product of s.14.1(2) of the Act, which limits any class created by Ministerial Instruction to 2750 applications per annum. We recommend that four separate programs be created – i.e. Gaining experience and Direct to PR categories in each of the two separate occupations; or preferably that the program as a whole be migrated to *Regulations*, which would have the added benefit of creating greater certainty for future years of this now long-established program, which has been relegated to “pilot” status for the last eight years. Currently, the demand is clearly significantly higher than the available space in the Home Child Care Provider Pilot, ***Gaining experience*** category. The number of applications accepted annually in this category should be increased.
4. Should the Pilot Programs be renewed beyond the initial five-year period, we recommend that the Programs subject to intake caps be opened to applications on the first weekday in January that is not a holiday. Applicants to the program and their representatives are currently required to forego holidays to submit applications on January 1st. Presumably, IRCC staff must do the same.

CONCLUSION

The CBA Section appreciates the opportunity to suggest improvements to Canada's caregiver programs. We would be pleased to discuss our recommendations, offer additional insights, and assist with the development and implementation of relevant policies.

Yours truly,

(original letter signed by Véronique Morissette for Lisa Middlemiss)

Lisa Middlemiss
Chair, CBA Immigration Law Section