



December 21, 2020

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

Daniel Mills
Assistant Deputy Minister, Operations
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Mr. Mills:

Re: COVID-19 and Delayed Returns of Application Packages by IRCC Processing Offices

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to raise concerns about application packages being returned unprocessed for erroneous or trivial reasons by IRCC Case Processing Centres (CPC) after months of delay, to the detriment of applicants and their families. We recommend remedial measures to increase the fairness and efficiency of completeness checks, minimize negative impacts when applications are deemed incomplete, and improve application intake in accordance with IRCC's targeted immigration levels.

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 is comprised of over 1,200 lawyers, practicing in all aspects of immigration law and rendering professional advice and representation in the Canadian immigration system to clients in Canada and abroad.

In the past year, we have regularly seen applications returned unprocessed by CPCs in Sydney and Mississauga, five to eight months after they were submitted. Most of these applications were under the Family Class and Spouse-in-Canada Class, and some were applications for permanent residence under economic classes. CPCs often return applications for invalid reasons. For example, information stated on the forms was said to have been omitted or included documents were noted as missing. In other cases, CPCs rejected applications for trivial reasons such as missing postal codes, or an unchecked box for appointing a representative on the Use of a Representative form. Sometimes no explanation is given for the return of an application. CPCs often returned documents that were damaged or disorganized. There are particularly concerning reports of returned packages containing documents belonging to strangers. Appendix A lists a representative sample of many instances reported by CBA Section members.¹

¹ While the content and style of these reports has been edited for clarity, all facts are presented as communicated by our members.

After months without acknowledgement or communication from CPCs, some lawyers tried to get an update on the status of an application through the IRCC call centre or “case-specific” webform. Call centre agents did not give meaningful answers and could not see the application in IRCC’s internal system. Replies to webform queries were generic responses about delays due to COVID-19. The lack of communication from CPCs or updates on the status of applications from IRCC has been stressful for applicants and their lawyers.

The return of unprocessed applications after delays causes serious harm that in many cases cannot be remedied. For example, with sponsorship applications under the Spouse/Common-Law Partner in Canada class, several applicants lost their status and implied authorization to work in Canada when accompanying applications for spousal work permits were returned months after the applicant’s prior status document expired.² These applicants could no longer work and lost access to vital social services including school enrollment for their dependent children. In other cases, children included as dependents on an original application were no longer eligible when applications were resubmitted as they had turned 22 years old and no longer qualified under the statutory definition of “dependent children.” For returned applications under a Provincial Nominee Program (PNP), the nomination certificate may have expired meaning that the applicant needed to obtain a renewed certificate from the provincial government. PNPs do not guarantee renewal of nomination certificates on applicants’ request. Additional time, effort and expense was needed to update forms, reassemble applications, and/or obtain new photos and updated police clearances. Lawyers often absorbed these costs as clients did not have the means to pay.

These delays have aggravated the separation of families amid a global pandemic that resulted in strict limitations on international travel. A key objective of the Canadian immigration system and the Minister’s mandate – reunification of families in Canada – has been compromised for reasons that are avoidable and in IRCC’s control.

The CBA Section wishes to collaborate with IRCC to improve the Canadian immigration system, especially amid a global pandemic that has limited international mobility. We recommend that IRCC take action to increase the efficiency in immigration-processing, minimize prejudice to applicants, and improve the acceptance rate for immigration applications by:

- Offering ongoing education to staff responsible for completeness checks³ on the current IRCC policy that applications with missing documents should not be immediately rejected. Where the applicant supplies an explanation that information or documents could not be obtained due to limitations or closures caused by COVID-19, IRCC’s policy allows a grace period of 90 days to submit the outstanding items.⁴
- Giving applicants 30-days to submit outstanding documents where there is no explanation in the application that information could not be supplied because of COVID-19. Adopting this practice will not be contrary to the regulatory requirement to only accept into processing applications which are considered complete. The formal requirements for application completeness in the regulations should be applied recognizing the crucial legislative objectives of family reunification, prompt processing, and fair and efficient procedures.⁵

² IRCC’s current [policy](#) is to treat a returned application as “have never been received, no implied status is granted, and the applicant will be considered in status until the original temporary resident document expires.”

³ Pursuant to s. 10 of the Immigration and Refugee Protection Regulations

⁴ COVID [policy](#).

⁵ Section 10 of the Regulations requires applications to contain certain information including:

10 [...] an application under these Regulations shall

- Informing applicants (or their authorized representatives) within 30 days of application receipt that information or documents are missing, and of the deadline to send them. This would be consistent with the US Citizenship and Immigration Services (USCIS) practice of sending a “request for evidence” letter to an applicant outlining the information or documents that are outstanding and the deadline to submit them. USCIS places an application on hold for the time specified in the letter before the processing office takes further action.⁶
- Allocating sufficient staffing resources to promptly screen applications for completeness and communicate with applicants and representatives in the timelines referenced above.
- Communicating regularly to CPC processing staff—through refresher training and periodic reminders—the importance of carefully screening applications for completeness. Determinations of incompleteness often occur due to preventable human error when an application package is not reviewed with proper attention. The instances shared by our members could be used for training purposes as examples of serious hardships where applications are returned unprocessed for erroneous or inconsequential reasons.
- Exercising fairness and flexibility in determining whether the absence of certain details and documents in application packages renders them incomplete. For example, an omitted postal code or an unchecked box where the answer is obvious does not impede the assessment of an application for eligibility, credibility or admissibility. Reliable proof of having met requirements can be evident from different types of documents. For example, if a transcript states a credential was awarded, demanding a separate document confirming the credential is unwarranted.
- Taking additional steps to remedy cases where applications were returned in error by IRCC:
 - The resubmitted application should be placed in the processing queue based on date the package was originally received.
 - If an applicant lost status after their application was returned in error, their temporary status should be restored to the class for which they applied, even if the

[...]

(c) include all information and documents required by these Regulations, as well as any other evidence required by the Act;

[...]

(2) The application shall, unless otherwise provided by these Regulations,

(a) contain the name, birth date, address, nationality and immigration status of the applicant and of all family members of the applicant, whether accompanying or not, and a statement whether the applicant or any of the family members is the spouse, common-law partner or conjugal partner of another person [...].

These requirements should be interpreted and enforced reasonably and in deference to the objectives of the enabling act (IRPA):

3 (1) The objectives of this Act with respect to immigration are

[...]

(d) to see that families are reunited in Canada;

[...]

(f) to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces;

(f.1) to maintain, through the establishment of fair and efficient procedures, the integrity of the Canadian immigration system [...]

statutory 90-day restoration window has passed. The \$200 restoration fee should also be waived. These measures can be achieved expediently through a public policy pursuant to s. 25.2 of the IRPA. The applicant's restoration application should be fast-tracked to reduce the time the individual remains out of status.

- Applicants and their lawyers should be given direct contact information for the staff/service area in the CPC to enable remedial communication.

We appreciate the opportunity to give feedback on IRCC's intake procedures, acknowledge current processing limitations, and suggest improvements. We would be pleased to participate in further discussions, answer any questions you have, and contribute additional solutions.

Yours truly,

(original letter signed by Nadia Sayed for Mark Holthe)

Mark Holthe
Chair, CBA Immigration Law Section

APPENDIX A:

Selected examples of applications returned by IRCC unprocessed in 2020

- 1) Spousal sponsorship (outside Canada) was submitted to CPC-Sydney on March 6, 2020. No communication from IRCC for many months until the applicant reached out to their MP in September 2020. When MP contacted IRCC, he could obtain a temporary file number and a confirmation that the sponsorship application was in queue.

In November 2020, IRCC returned the application to counsel because certain details on the IMM 5406 form were missing. The documents in the returned package were in disarray, and the temporary file number was handwritten and whited-out in multiple places. CPC clerks took time to write the temporary file number and then white it out by hand, which would likely take half an hour, yet did not communicate an acknowledgement promptly on receipt or return the application due to incompleteness in a timely manner.

- 2) Spouse-in-Canada sponsorship was sent to CPC-Mississauga on April 28, 2020. The application was returned on November 1, 2020 as incomplete because certain details on the IMM 5406 form and a copy of the marriage certificate were missing. Both reasons were invalid. The applicant and their family were residing in a country that did not have postal codes (hence none was stated on the form). The marriage certificate was included.

The documents in the returned package were in a disarray.

The sponsor contacted the IRCC Call Centre in late October and was told that the application was in the system and there were no issues. After IRCC returned the application, the sponsor and counsel contacted the IRCC Call Centre again to ask why the application was returned after such a long delay. The agent stated that their system did not show any application pending because it would have been returned.

Subsequently, the sponsor received a letter from IRCC acknowledging receipt of the application and assigning a temporary "XF" number. This letter arrived on November 23, 2020, three weeks after the application was returned. The letter was undated.

Prior to the return of the application in November 2020, counsel sent two queries through the Case-specific webform asking for updates. IRCC refused to provide updates because they could not verify that counsel was the authorized representative even though the Use of Representative form had been supplied. Counsel sent a new Use of Representative form, but there was no further response from IRCC.

Since the original application submission, the applicant's child turned 22 and is no longer eligible to be included as a dependent child. Counsel could not charge the client for the cost incurred in resubmitting the application because the client does not have the funds.

- 3) Citizenship application submitted to CPC-Sydney in June 2020 and returned in December 2020. The reason highlighted for return was a missing answer for preferred language of service. This was the only reason given and yet the answer had been provided. The documents in the returned package were out of order.
- 4) Overseas spousal sponsorship (outside Canada) was submitted to CPC-Sydney in January 2019. IRCC returned the application in April 2019 because the box for the appointment of representative on the Use of Representative form was not checked off. It was evident from the content of the form that a representative was being appointed.
- 5) Electronic Express Entry application was returned unprocessed because the applicant had not included a copy of their post-secondary diploma. However, the applicant supplied a transcript indicating that the program was completed and a diploma was granted. IRCC refused a request for reconsideration. The applicant could not reapply because they lost eligibility under Express Entry as a result of no longer having the qualifying amount of work experience immediately prior to applying. The applicant's post-graduate work permit also expired when the application was

returned, and the applicant did not qualify for a bridging work permit. The applicant, a front-line healthcare professional (registered practical nurse), had to cease working.

- 6) Spousal sponsorship (outside Canada) was submitted to CPC-Sydney in December 2018, and was returned in April 2019. The return was in error because, while IRCC expected to see the information about the applicant's military service in X country, the applicant was not a citizen of that country (which was clearly specified in the application). The applicant incurred additional expenses to update photographs and to pay for courier delivery again.
- 7) Spouse-in-Canada sponsorship was submitted to CPC Mississauga on April 28, 2020. An application for a spousal work permit was included, with the intent to keep the applicant in implied status and continued authorization to work. IRCC assigned a temporary application number in September 2020, and then returned it in November 2020. The reasons for the return were allegedly the missing marriage certificate and police clearance from X country. However, the marriage certificate was included with the original package. For the missing police certificate, an enclosed note explained that the authorities responsible for issuing the documents in X country were closed due to COVID-19. Because the application was returned after a delay, the applicant lost her implied status and ability to work. Time and effort were spent on updating forms and signatures out of fear that IRCC would reject the application again for outdated form and old signatures.
- 8) In-Canada sponsorship was submitted to CPC Mississauga on March 19, 2020. IRCC sent acknowledgement of receipt with a temporary file number on September 24, 2020, but then returned the application on November 19, 2020. The rejection was in error, as the allegedly missing translation of a birth certificate was provided. The package was returned in disarray. The applicant's child could not attend school in Canada because the parent did not have a valid work permit. The child will likely lose at least a full year of school, because obtaining a spousal work permit will be substantially delayed. Counsel spent 4 hours preparing and submitting a new application package, and this time could not be billed to the applicant as they had limited financial resources. IRCC emailed counsel on November 25, 2020, requesting a copy of the passport so that the processing of the work-permit application could continue. The applicant's passport expired earlier, while the sponsorship application remained in CPC-Mississauga's queue for months; the applicant renewed the passport and sent a copy of the new passport to IRCC through the Case-specific webform on October 13, 2020.
- 9) Application to sponsor an adopted child, clearly marked "Sponsorship: Adopted Child," was submitted to CPC-Sydney on March 18, 2020. IRCC returned it in October 2020. The stated reason for the return was not using the checklist for a biological dependent. This was wrong: the proper checklist was for an adopted child, and counsel did use that checklist. Counsel's query to IRCC by email on October 29, 2020, was unanswered. Counsel escalated the matter to an assistant director at CPC-Sydney in December 2020, which resulted in a further escalation to the IRCC office in Ottawa to clarify whether the application was returned in error. There is no definitive answer from IRCC yet.
- 10) In-Canada spousal sponsorship application and application for a spousal work permit were originally submitted to CPC-Mississauga on February 11, 2020, and returned on March 30, 2020. IRCC's refusal reason was invalid, since the birth certificate, allegedly missing, was included into the original package. Documents in the returned package were out of order, and counsel's submission letter was missing. The application was resubmitted on April 10, 2020. No acknowledgement of receipt or other communication from IRCC to date.
- 11) A Family Class application was delivered to CPC-Sydney on July 20, 2020. IRCC returned it on November 20, 2020, without no reasons for the return. The applicant and counsel have enlisted their MP to ascertain why IRCC returned the application and to request that the re-submitted application be placed to the front of the queue. Forms are now out of date, photos need to be redone, and new police certificates need to be ordered and paid for.

- 12)** Outside-Canada spousal sponsorship was submitted in August 2020. The application was returned in late November in disarray, and for invalid reasons. They alleged the IMM 0008 was incomplete, the marriage certificate was missing, and translation of a required document was not included, all of which was untrue. Counsel rummaged through the disordered package and found the marriage certificate close to the bottom. The returned documents were hole-punched. Some forms need to be re-completed because newer versions of the form now exist, new photographs need to be done and paid for.
- 13)** Applications for proof of citizenship for a parent and two dependent children were submitted in September 2019. IRCC returned them as incomplete in November 2019, saying satisfactory ID documents were not supplied for the child. This was untrue. Counsel re-assembled and re-submitted the applications in November 2019. IRCC returned them again in January 2020, again for invalid reasons. IRCC required certified copies of certain documents, but the document checklist did not specify that certified copies were necessary. Applications were submitted to IRCC for the third time. The applicants are outside Canada and unable to return for over two years.
- 14)** A PNP application was submitted to the Centralized Intake Office on April 9, 2020 (receipt date was whited-out in the returned package). On June 2, 2020, IRCC informed the applicant by e-mail that the application was in process. However, IRCC returned the application unprocessed on November 20, 2020, allegedly because the IMM 0008 form was not signed. However, the applicant did sign this form. In the original submission, the forms were stapled separately, but in the returned application, IRCC removed the staples and disordered the pages. The signed page from IMM 008 was at the back of the returned package. All pages were hole-punched.

The PNP certificate expired since the original submission, and it would take at least two months to obtain a renewed one. The forms would need to be redone and resigned. Counsel sent the application back to IRCC on the date when the returned package arrived, explaining that all the forms were properly signed from the outset and demanding that the application be placed into the processing queue reflecting the original receipt date in April 2020.
- 15)** In-Canada sponsorship application submitted to CPC-Mississauga in April 2020. IRCC returned the application in October 2020, sending it directly to the client although the Use of Representative form had been provided. IRCC also sent another applicant's application package to the client in the return package addressed to the client. IRCC returned the client's sponsorship package in error, saying a birth certificate was missing, but this document had been included. The documents were disordered and pulled apart. Counsel always orders the documents in the application package exactly according to the relevant document checklist. The applicant fell out of status and lost implied authorization to work when IRCC returned the package. The applicant is not able to work during the months their application for restoration and spousal work permit remains in processing.
- 16)** An application under the Spouse-in-Canada Class was sent to CPC-Mississauga in April 2020, and returned unprocessed by IRCC in September 2020. The reason for rejection was that some postal codes were missing on the IMM 5406 form. Counsel never had applications rejected for trivial reasons in 30 years of immigration practice, let alone during a pandemic.