AUGUST 2014

Blaney McMurtry
BARRISTERS & SOLICITORS LLP

Blaneys on Immigration

EDITOR:

Henry J. Chang
416.597.4883
hchang@blaney.com

This newsletter is designed to highlight new issues of importance in immigration related law. We hope you will find it interesting, and welcome your comments.

Feel free to contact any of the lawyers who wrote or are quoted in these articles for more information, or call the head of our Immigration Law Group, Ian Epstein at 416.593.3915 or iepstein@blaney.com.

IN THIS ISSUE:

"Bill C-24 updates the eligibility requirements for Canadian citizenship, strengthens security and fraud provisions, and amends provisions governing the processing of applications and the review of decisions."

CANADIAN CITIZENSHIP AMENDMENTS RECEIVE ROYAL ASSENT

Henry J. Chang

As previously reported, on February 6, 2014, Citizenship and Immigration Minister (the "Minister") Chris Alexander unveiled Bill C-24, the *Strengthening Canadian Citizenship Act*, which proposed significant amendments to the Canadian *Citizenship Act* (R.S.C., 1985, c. C-29). On June 19, 2014, the Bill C-24 received Royal Assent and became law.

Bill C-24 updates the eligibility requirements for Canadian citizenship, strengthens security and fraud provisions, and amends provisions governing the processing of applications and the review of decisions. The amendments to the eligibility requirements include:

1) Clarifying the meaning of being resident in Canada (physical presence rather than residence);
2) Modifying the period during which a permanent resident must reside in Canada before they may apply for citizenship (four years of physical presence in Canada during the six years preceding the filing of the application);
3) Expediting access to citizenship for persons who are serving in, or have served in, the Canadian Armed Forces;
4) Requiring that an applicant for citizenship demonstrate, in one of Canada's official languages, knowledge of Canada and of the responsibilities and privileges of citizenship;
5) Specifying the age of which an applicant for citizenship must demonstrate the knowledge referred to above and must demonstrate an adequate knowledge of one of Canada's official languages (changed from 18-54 to 18-64);
6) Requiring that an applicant meet any applicable requirement under the *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.)) to file a an income tax return for the four taxation years during which they claim to have been resident in Canada;
7) Conferring citizenship on certain individuals and their descendants who may not have acquired citizenship under prior legislation;
8) Extending an exception to the first-generation limit to citizenship by descent to children born to or adopted abroad by parents who were themselves born to or adopted abroad by Crown servants; and
9) Requiring, for a grant of citizenship for an adopted person, that the adoption not have circumvented international adoption law.

The amendments to the security and fraud provisions include:

BLANEYS ON IMMIGRATION

"The amendments ... include ... [i]ncreasing the period during which a person is barred from applying for citizenship after having been convicted of certain offences ..."

Henry J. Chang is a partner in the firm's Immigration Law group. He is admitted to the practice of law in the Province of Ontario and the State of California. Henry is also an Executive Member of the Canadian Bar Association National Citizenship & Immigration Law Section. A recognized authority in the field of United States and Canadian immigration law, he lectures extensively on the subject in both the United States and Canada.

Henry may be reached directly at 416.597.4883 or hchang@blaney.com.

1) Expanding the prohibition against granting citizenship to include persons who are charged outside Canada for an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament or who are serving a sentence outside Canada for such an offence;
2) Expanding the prohibition against granting citizenship to include persons who, while they were permanent residents, engaged in certain actions contrary to the national interest of Canada, and permanently barring those persons from acquiring citizenship;
3) Aligning the grounds related to security and organized criminality on which a person may be denied citizenship with those grounds in the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27) and extending the period during which a person is barred from acquiring citizenship on that basis;
4) Expanding the prohibition against granting citizenship to include persons who, in the course of their application, misrepresent material facts and prohibiting new applications by those persons for a specified period;
5) Increasing the period during which a person is barred from applying for citizenship after having been convicted of certain offences;
6) Increasing the maximum penalties for offences related to citizenship, including fraud and trafficking in documents of citizenship;
7) Providing for the regulation of citizenship consultants;
8) Establishing a hybrid model for revoking a person's citizenship in which the Minister will decide the majority of cases and the Federal Court will decide the cases related to inadmissibility based on security grounds, on grounds of violating human or international rights or on grounds of organized criminality;
9) Increasing the period during which a person is barred from applying for citizenship after their citizenship has been revoked;
10) Providing for the revocation of citizenship of dual citizens who, while they were Canadian citizens, engaged in certain actions contrary to the national interest of Canada, and permanently barring these individuals from reacquiring citizenship; and
11) Authorizing regulations to be made respecting the disclosure of information.

The amendments to the provisions governing the processing of applications and the review of decisions include:

1) Requiring that an application must be complete to be accepted for processing;
2) Expanding the grounds and period for the suspension of applications and providing for the circumstances in which applications may be treated as abandoned;
3) Limiting the role of citizenship judges in the decision-making process, subject to the Minister periodically exercising his or her power to continue the period of application of that limitation;
4) Giving the Minister the power to make regulations concerning the making and processing of applications;
5) Providing for the judicial review of any matter under the Act and permitting, in certain

"... a proposed regulatory amendement ... would reduce the upper age limit for dependent children from 'under 22' to 'under 19' and would remove the exception for children 19 or older who are financially dependent on their parents and are enrolled in full-time studies."

circumstances, further appeals to the Federal Court of Appeal; and

6) Transferring to the Minister the discretionary power to grant citizenship in special cases.

Bill C-24 also makes related amendments to the *Federal Courts Act* (R.S.C., 1985, c. F-7) and the *Immigration and Refugee Protection Act*. ■

CITIZENSHIP AND IMMIGRATION CANADA ANNOUNCES CHANGE TO DEFINITION OF DEPENDENT CHILDREN

Henry J. Chang

As *previously reported*, on May 10, 2013, Citizenship and Immigration Canada ("CIC") announced a proposed regulatory amendment to the definition of "dependent child." Once enacted, it would reduce the upper age limit for dependent children from "under 22" to "under 19" and would remove the exception for children 19 or older who are financially dependent on their parents and are enrolled in full-time studies. However, it would not eliminate the exception for children who, regardless of age, have depended on their parents for financial support because of a mental or physical condition.

At the time of the initial announcement, CIC had proposed an effective date of January 1, 2014. However, CIC did not actually announce the effective date of the proposed change until June 23, 2014. According to this *recent announcement*, the new definition of dependent child became effective as of August 1, 2014.

Permanent residence applications that were already pending prior to August 1, 2014, will still be subject to the prior definition of dependent child. However, most permanent residence applications filed on or after August 1, 2014, will be subject to the new definition.

The regulatory amendments contain transitional measures that allow certain applicants under multi-step permanent resident immigration programs, who: (1) were already in the immigration process on August 1, 2014; but (2) who had not yet submitted their application for permanent residence; to have their applications completed based on the previous definition of dependent child. These transitional measures will apply to certain groups, including the following:

1) Provincial Nominee Program applicants;
2) Applicants who have applied under one of Quebec's economic programs;
3) Live-in caregivers;
4) Refugees abroad and refugee claimants;
5) Quebec humanitarian cases;
6) Parents or grandparents whose sponsorship applications were received before November 5, 2011; and
7) Privately sponsored refugees whose sponsorship applications were received before October 18, 2012.

In addition, to ensure that children who meet the definition of dependent child at the first stage of a multi-step permanent resident immigration program remain eligible during immigration processing; the child's age will be "locked in" at the first

formal step of the immigration process. For example, the age of a child whose parent applies to the Provincial Nominee Program will be "locked in" on the date that the application for nomination is made to the province.

The full text of the regulatory amendments appears here. ■

EXPECT THE BEST

Blaney McMurtry
BARRISTERS & SOLICITORS LLP

2 Queen St. East, Suite 1500
Toronto, Canada M5C 3G5
416.593.1221 TEL
416.593.5437 FAX
www.blaney.com