



Blaneys on Immigration

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.

Editor:
Melanie I. Francis
416.597.4895
mfrancis@blaney.com

IN THIS ISSUE:

The Quebec Ministry of Immigration and Cultural Communities Will Restrict Certificate of Selection Applicants
Henry J. Chang

CIC Proposes Conditional Permanent Residence to Discourage Marriage Fraud
Henry J. Chang

CIC Imposes Five-Year Waiting Period for Sponsored Spouses and Common-Law Partners
Henry J. Chang

CIC's Come to Canada Wizard Helps to Assess Immigration Eligibility
Henry J. Chang

“The proposed bill will establish caps on the number of Quebec immigration applicants that may be accepted...”

THE QUEBEC MINISTRY OF IMMIGRATION AND CULTURAL COMMUNITIES WILL RESTRICT CERTIFICATE OF SELECTION APPLICANTS

Henry J. Chang

On March 20, 2012, the Quebec Minister of Finance presented his speech on the 2012-2013 Budget. During the speech, he announced that an omnibus bill containing modifications to Quebec's immigration program would be proposed shortly. Although it is a proposed bill, once enacted the immigration provisions will be retroactive to March 20, 2012. Therefore, these changes should be treated as if they are already in force.

The proposed bill will establish caps on the number of Quebec immigration applicants that may be accepted between March 21, 2012 (19:00 Québec time) and March 31, 2013 (19:00, Québec time). Under the proposed bill, there will be two groups of skilled workers:

a) Group 1 (No Numerical Limit) - This group will consist of the following:

- 1) Applicants who temporarily reside in Quebec as temporary workers and meet the eligibility conditions of the Programme de l'expérience québécoise (Temporary worker) (PEQ - Québec experience program for temporary work-

ers) or are eligible to apply for a selection certificate under the regular program for skilled workers.

- 2) Applicants who have obtained a diploma awarded by a Quebec educational institution for studies done in Québec or who are about to obtain that diploma and meet the eligibility conditions of the Programme de l'expérience québécoise (Quebec Graduate) (PEQ - Quebec experience program for Quebec graduates).
- 3) Applicants who reside temporarily in Quebec as foreign students, are eligible to apply for a selection certificate under the regular program for skilled workers, and are submitting their application in Quebec.
- 4) Applicants who reside temporarily in Quebec within the framework of a youth exchange program subject to an international agreement, such as a work holiday program. They must be working full-time in Quebec, be eligible to apply for a selection certificate under the regular program for skilled workers, and must be submitting their application in Quebec.
- 5) Applicants (or their accompanying spouses) who hold a diploma awarded by a teaching institution in an area of training allowing them to get 12 or 16 points under the area of training criterion of the

“The proposed bill will also establish caps on the number of business immigrants who may apply for a Quebec Certificate of Selection.”



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.

selection grid for skilled workers. The number of years of study required to obtain the diploma must be at least equal to the number of years required to obtain that diploma in Quebec. This diploma must have been obtained less than five years before the date of the application. Failing that, they must have practised a profession or trade, in an area related to that diploma, on a full-time basis and for at least one year out of the five years preceding the date of their application.

- 6) Applicants (or their accompanying spouses) who hold an employment offer made by a Quebec employer and validated by the Minister of Immigration and Cultural Communities.
 - 7) Applicants who have received notice from Citizenship and Immigration Canada that their application for permanent residence in Canada is eligible for processing.
 - 8) Applicants who reside temporarily in Quebec, who were Canadian citizens at one time, and who are submitting their application in Quebec.
- b) **Group 2 (Subject to a Numerical Limit of 14,300 Applications)** - This group will consist of the following:
- 1) Applicants (or their accompanying spouses) who hold a diploma, awarded by an teaching institution in an area of training allowing them to get 6 points under the area of training criterion of the selection grid for skilled workers. The number of years of study required to obtain the diploma must be at least equal to the

number of years required to obtain that diploma in Quebec. This diploma must be obtained less than five years before the date of the application. Failing that, they must have practised a profession or trade, in an area related to that diploma, on a full-time basis and for at least one year out of the five years preceding the date of the application.

- 2) Applicants (or their accompanying spouses) who hold a Quebec diploma or the equivalent of a Quebec diploma that requires at least one year of full-time studies. This diploma must have been obtained less than five years before the date of the application. Failing that, they must have practised a profession or trade, in an area related to that diploma, on a full-time basis and for at least one year out of the five years preceding the date of the application.

No other skilled workers will be permitted to apply for a Quebec Certificate of Selection.

The proposed bill will also establish caps on the number of business immigrants who may apply for a Quebec Certificate of Selection. Applicants under the popular Quebec investor program will now be subject to a cap of 2,700 applications. Applicants under the Quebec entrepreneur and self-employed categories will be subject to a cap of 215 applications. ■

“A spouse or common-law partner who is granted conditional permanent resident status would be required to live with their sponsor in a legitimate relationship for two years following the receipt of permanent resident status.”

CIC PROPOSES CONDITIONAL PERMANENT RESIDENCE TO DISCOURAGE MARRIAGE FRAUD

Henry J .Chang

On March 9, 2012, Jason Kenney, the Minister of Citizenship, Immigration and Multiculturalism, announced additional measures to discourage marriage fraud. The proposed regulatory change was published in the Canada Gazette on March 10, 2012, and is available at: <http://www.gazette.gc.ca/rp-pr/p1/2012/2012-03-10/html/reg1-eng.html>.

Under the new proposal, conditional permanent resident status would apply to all spouses in relationships of two years or less who have no children with their sponsor at the time of the sponsorship application. A spouse or common-law partner who is granted conditional permanent resident status would be required to live with their sponsor in a legitimate relationship for two years following the receipt of permanent resident status. If this does not occur, the sponsored spouse or common law partner's conditional permanent resident status could be revoked. For all legitimate relationships, the condition would cease to apply once the conditional period elapsed.

Given concerns about the vulnerability of spouses and partners who are in abusive relationships, the proposed condition would cease to apply in instances where there is evidence of abuse or neglect by the sponsor, or where there is evidence of a failure by the sponsor to protect from abuse or neglect by another person related to the sponsor (whether that person is residing in the household or not) during the conditional period. Evidence that the sponsored spouse or partner

was cohabiting in a conjugal relationship with their sponsor until the cohabitation ceased as a result of the abuse or neglect would also be required. The exception would apply in cases where the abuse or neglect occurred during the conditional period and was directed towards the sponsored spouse or partner, a child of either the sponsor or the sponsored spouse or partner, or a person related to either the sponsor or the sponsored spouse or partner who was habitually residing in their household.

The condition would also cease to apply where there is evidence that the sponsor has died while the sponsored person is still subject to the condition and that the sponsored spouse or partner had cohabited in a conjugal relationship with the sponsor up until the time of the sponsor's death.

The above proposal is modeled, to some extent, after United States immigration law. In the United States, where a United States citizen or lawful permanent resident sponsors his or her immigrant spouse, based on a marriage that is less than two years old at the time that the spouse acquires lawful permanent residence, the immigrant spouse is given conditional permanent resident status for two years. Unlike the Canadian proposal, this condition applies regardless of whether there are children from the relationship.

Within 90 days of the second anniversary of the immigrant spouse's receipt of permanent residence, the sponsor and the immigrant spouse must jointly file a petition to remove the condition and establish that they are living together as husband and wife. There is also a procedure to apply for a waiver of the condition in cases of:

- a) Extreme hardship to the immigrant spouse;

“...a regulatory change...now requires sponsored spouses or common-law partners to wait five years, from the day that they are granted permanent residence status in Canada, before they can sponsor a new spouse or partner.”

- b) Good faith termination of the marriage;
- c) A battered spouse or child; and
- d) Death of the U.S. citizen or permanent resident sponsor.

Although the Canadian Government's desire to discourage immigration fraud is not unreasonable, the current Canadian proposal is problematic for a number of reasons:

- a) It does not clearly state whether spouses and common-law partners who are subject to the condition will be required to formally apply to have the condition removed or whether it will automatically occur in the absence of a marital breakdown. A requirement to file a formal application would increase the workload of immigration officers and create added bureaucracy.
- b) Unlike the U.S. model, the Canadian proposal does not consider a good faith termination of the marriage. In other words, it does not contemplate a termination of the marriage due to no fault of the sponsored spouse or common-law partner. The absence of such an exception places sponsored spouses and common-law partners at the mercy of their sponsors, who may use the threat of divorce proceedings to exert undue influence over them.
- c) No guidelines have been provided regarding what evidence of abuse or neglect will be required in order to terminate the condition. Many abused spouses do not actually report the other spouse's conduct to the authorities, which can make it difficult to establish abuse or neglect. In addition, uncertainty regarding whether an immigration officer will actually find abuse or neglect in a particular case may

discourage immigrant spouses and common-law partners from ending these harmful relationships.

Before imposing conditional permanent resident status on sponsored spouses and common-law partners, the implications of such a requirement should be carefully considered to ensure that abused or neglected individuals are not subjected to unnecessary hardship. ■

CIC IMPOSES FIVE-YEAR WAITING PERIOD FOR SPONSORED SPOUSES AND COMMON-LAW PARTNERS

Henry J. Chang

On March 2, 2012, the Government of Canada announced a regulatory change that now requires sponsored spouses or common-law partners to wait five years, from the day that they are granted permanent residence status in Canada, before they can sponsor a new spouse or partner. The objective of this change is to discourage immigration fraud in spouse/common-law partner family class cases.

There is admittedly a reasonable argument to be made in favor of such a requirement. Until this regulatory change, a sponsored spouse or common-law partner arriving in Canada as a permanent resident could leave their original sponsor and sponsor another spouse or partner themselves, while the original sponsor remained financially responsible for them for up to three years.

Despite the potential for such a scenario, the imposition of a five-year bar may be a bit excessive. A Canadian citizen or permanent resident who sponsors a spouse or common-law partner

is normally subject to a legally enforceable affidavit of support, for a period of three years. Although it may be logical to impose a bar on the sponsored immigrant's ability to sponsor a different spouse or common-law partner for a period of time, a three-year bar that runs parallel to the original sponsor's three-year financial obligation may have been more appropriate.

In any event, the regulations now impose a sponsorship bar of five years. The proposal was pre-published in the Canada Gazette on April 2, 2011, and was open for a 30-day public comment period. The regulatory change officially came into force on March 2, 2012, but was not formally published in the Canada Gazette until March 14, 2012. The regulatory amendment, as published in the Canada Gazette, appears here: <http://www.gazette.gc.ca/rp-pr/p2/2012/2012-03-14/html/sor-dors20-eng.html>. ■

CIC'S COME TO CANADA WIZARD HELPS TO ASSESS IMMIGRATION ELIGIBILITY

Henry J. Chang

Approximately seven months ago, Citizenship and Immigration Canada ("CIC") launched its Come to Canada Wizard (the "Wizard"). According to CIC, the Wizard has recorded more than 750,000 visits since its launch. CIC also claims that close to 90% of users who tried the Wizard said that they would recommend it to someone they know.

The Wizard is essentially an interactive website. It presents users with a series of questions designed to determine which federal immigration option best suits their specific circumstances. It then

leads users through the application steps and provides the necessary instructions and forms.

Although the Wizard is a useful tool for prospective visitors, students, temporary workers, and permanent residents, it is still not a substitute for formal legal advice. One important shortcoming of the Wizard is the fact that it assesses only eligibility under the federal immigration categories. It fails to assess a prospective applicant's eligibility to immigrate under the Quebec Immigration Program or one of the available Provincial Nominee Programs. These programs are often (but not always) preferable to seeking permanent residence under one of the federal categories.

Despite its limitations, the Wizard may be useful in preventing deceptive practices employed by unscrupulous immigration representatives. Foreign nationals who have been told that they are eligible under a particular federal immigration category can use the Wizard to verify whether they are actually eligible for the immigration benefit that they seek. ■

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

Blaney on Immigration is a publication of the Immigration Law Group of Blaney McMurtry LLP. The information contained in this newsletter is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.

We welcome your comments. Address changes, mailing instructions or requests for additional copies should be directed to Kylie Aramini at 416 593.7221 ext. 3600 or by email to karamini@blaney.com. Legal questions should be addressed to the specified author.