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PUBLICATION

CIC Announces Proposed Changes to the Definition of "Dependent Children"

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Introduction

On May 10, 2013, Citizenship and Immigration Canada ("CIC") announced proposed regulatory amendments that will narrow the definition of "dependent child" by reducing the age limit to children under the age of 19 and removing the exception for full-time students. Once implemented, this proposed change will adversely affect the dependent children of all prospective immigrants to Canada.

Current Definition

According Section 2 of the current *Immigration and Refugee Protection Regulations* (SOR/2002-227), the term "dependent child" means a child who:

a. Has one of the following relationships with the parent: (i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent; or (ii) is the adopted child of the parent; and

b. Is in one of the following situations of dependency: (i) is less than 22 years of age and not a spouse or common-law partner; (ii) has depended substantially on the financial support of the parent since before the age of 22 — or if the child became a spouse or common-law partner before the age of 22, since becoming a spouse or common-law partner — and, since before the age of 22 or since becoming a spouse or common-law partner, as the case may be, has been a student continuously enrolled in and attending a post-secondary institution that is accredited by the relevant government authority and actively pursuing a course of academic, professional or vocational training on a full-time basis; or (iii) is 22 years of age or older and has depended substantially on the financial support of the parent since before the age of 22 and is unable to be financially self-supporting due to a physical or mental condition.

In other words, the current definition of “dependent child” includes the following:

a. A child who is under 22 years of age and who is not a spouse or common law partner;

b. A child who is 22 years of age or older if that person has depended on the financial support of the parent(s) and has attended school continuously as a full-time student since before the age of 22 (or, if married or in a common-law relationship before that age, since becoming a spouse or common-law partner); and

c. A child who is 22 years of age or older if that person has depended on the financial support of his or her parent(s) since before the age of 22 and is unable to support themselves financially due to a physical or mental condition.

CIC's Rational for the Proposed Amendment

According to CIC, dependent children represent 30% of the overall immigrants admitted annually to Canada. It further states that, based on 2012 statistics, dependents under the age of 19 constituted 90% (64,757) of all sponsored children, while those 19 years of age and older constituted 10% (7,237) of all sponsored children.

CIC claims that older dependent children (those who arrive between the ages 19 and 21 years old) have lower economic outcomes than those who arrive in Canada at a younger age (between 15 and 18 years old). It also claims that older immigrants have a more challenging time fully integrating into the Canadian labour market and this is more evident for immigrants who are not selected based on their own merits (i.e. dependent children).

In addition, CIC claims that fraudulent school attendance documentation is prevalent in some countries and verification of attendance and enrolment can be labour-intensive.

Effect of the Proposed Amendment

Based on the above, CIC is proposing to limit the definition of “dependent children” to those under the age of 19. It is also proposing to eliminate the exception for full-time students. However, the exception for older dependents who are unable to support themselves due to a physical or mental condition will be continued.

In addition, the proposed amendments would alter the application fees for overage dependent children in permanent residence cases. Currently, overage dependent children (22 years old and over) are subject to the same processing fees as spouses and partners of principal applicants; the fee for these dependent children is $550CAD while the fee for younger dependants (under 22 years old) is only $150CAD.

Once the proposed amendment has been implemented, the only overage dependent children (19 years old and over) will be those who are financially dependent on their parents due to a physical or mental condition. As a result, proposed amendments will reduce the permanent residence application fee for these overage dependent children to $150CAD, the same amount that is charged for dependent children under the age of 19.

The definition of “dependent child” contained in Section 2 of the *Immigration and Refugee Protection Regulations* also applies to dependents of temporary residents such as foreign workers and students. Although the announcement discusses the proposed amendment only in the context of permanent residence cases, at the present time it is uncertain whether CIC intends to also apply this definition in temporary resident cases.

Proposed Implementation

CIC is proposing an effective date of January 1, 2014, for the above amendment. For applicants who submit a sponsorship application and/or permanent resident application on or after this date, the proposed new definition for dependent child would apply. For applicants who submitted a permanent resident application prior to January 1, 2014, the current definition of dependent child would continue to apply.

Transitional provisions are also proposed for applicants who would already be in the immigration application process on January 1, 2014, but who may not yet have submitted the permanent resident portion of their immigration application. The transitional provisions would allow these persons to have their permanent resident applications, including their dependent children, finalized under the criteria in force at the time that their immigration applications were initiated.

The age of dependants is locked-in at the time the permanent resident application is received by CIC. In certain cases, applicants will have initiated their immigration process years before being in a position to submit an application for permanent residence. Given the processing for these groups of applicants, the transitional provisions would apply in the following cases:

a. Live-in caregivers come to Canada first as temporary foreign workers, usually without their children. Most (98%) apply for permanent residence and expect to reunite with their children after having gained the required experience, years later.

b. Refugees abroad and refugee claimants have been forced to flee persecution and have little control on the destination and timing of their migration. It may take years before they are granted protected person status and can file an application for permanent residence.

c. Persons coming to Canada under Section 25.2 of the *Immigration and Refugee Protection Act* (i.e. public policy consideration) often experience refugee-like situations and may also have to wait some time, once selected under these policies, before being able to submit their permanent resident applications.

In some programs, two applications must be submitted: (a) a sponsorship application, and (b) a permanent resident application. In the past, these applications under the parents and grandparents and resettlement categories could be submitted separately (i.e. the permanent resident application would follow a positive assessment of the sponsorship application). In order to not penalize applicants who at the effective date of the amendment would not have submitted

their permanent resident application, the transitional provisions would also extend to the following groups:

a. Parents and grandparents for whom a sponsorship application alone was submitted before November 5, 2011, the date on which CIC put in place a temporary pause on the acceptance of new sponsorship applications under this category as part of its Action Plan for Faster Family Reunification.

b. Refugees abroad for whom a sponsorship application alone was received before October 18, 2012. Prior to that date, the refugee's permanent resident application was received after CIC approved the sponsorship application.

In both cases, the permanent resident application which includes the application for the dependent child, would not have been submitted with the sponsorship application and may not have been received by CIC at the time of coming into force of the proposed new definition.

Conclusion

The proposed amendment to the definition of "dependent child" will be of significant concern for many potential immigrants, who may decide to not immigrate if their older dependent children cannot accompany them. It is expected that there will considerable resistance to this proposed change during the next seven months.