

CIC Proposes Conditional Permanent Residence to Discourage Marriage Fraud

Date: March 26, 2012

Original Newsletter(s) this article was published in: Blaneys on Immigration: March 2012

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 [here](#).

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;
- 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.