

Temporary Residents and Removal Proceedings

Legal temporary residents of Canada are those who have valid status as students, workers or visitors. With the ever changing state of Canada's immigration laws and regulations, many temporary residents may inadvertently lose their status due to ignorance, misinformation or even carelessness.

Those who have lost their status are understandably fearful of being removed anytime soon and thrown on the next flight back to their home country. However, misconceptions about the removal process abound and are misleading even temporary residents who may still have valid status in Canada.

There are those who initially came to Canada as visitors, workers or students whose initial permits may have expired but whose extension applications are still pending. Some of them fear that they may just be picked up by the authorities and detained since they could not show any proof of legal status. Such fear is premature if the temporary resident has submitted an application to renew their temporary resident status before the expiry of their current status in Canada and a decision on the application has not been received. Provided all legal requisites are met, the temporary resident who has a pending renewal application will have the benefit of implied status under the Immigration and Refugee Protection Act (IRPA) and its regulations. The implied status ends on the day that a decision is received on the renewal application, granting or refusing the extension requested. If the renewal application is refused, the applicant loses temporary resident status in Canada on the day that the refusal letter was received. It is at this point that the person may be well-advised to leave the country as soon as possible to avoid going through enforcement proceedings and/or not to prejudice any future applications to return to Canada.

However, there is also the option of applying for a restoration of status within 90 days of having lost temporary resident status provided that certain legal criteria are met. These criteria include the reasons for the loss of status and any other type of immigration violation committed. In some cases, the restoration is granted as a matter of course, but in others, this can be subject to a certain level of discretion after assessing factors such as the reason for inability to request an extension prior to expiry of previous status, a positive labour market impact assessment based on an existing job offer, continuing studies, pending PR application, etc. If the 90 days have passed, the option of seeking a restoration will not anymore be available but there may still be other options, depending on the circumstances.

It must be noted however, that unlike the period of implied status, the temporary resident is already without valid status during the 90-day restoration period. Therefore, although the restoration option is still available, so is the possibility of being subject to enforcement proceedings for non-compliance with IRPA and its regulations.

That said, a person who had lost legal temporary status in Canada need not simply live in fear of being "picked up" by enforcement officers and thrown on the next plane out of Canada. If there are compelling reasons or factors involved, it will be best to consult a trustworthy immigration advisor to discuss possible options to legalize one's status.

For instance, if there is a genuine risk to one's life if returned to one's home country, there are applications that can be made to seek protection from such harm provided they meet applicable criteria. These remedies however, should never be abused by agreeing to unscrupulous advice such as concocting stories to support one's application for permanent resident status in Canada. These unethical activities are not only morally and legally wrong, but also prejudice the many other applicants who are really trying to escape various forms of persecution in their home countries. If a genuine refugee is refused simply because the adjudicator has heard too many similar concocted stories, then a travesty of justice has been perpetrated against those truly deserving of Canada's protection.

There are also cases where compelling humanitarian and compassionate considerations exist (other than risk to one's life) which could be raised in support of one's application to remain in Canada. These include factors such as strong establishment in Canada, best interests of children affected and other types of hardship that may result from a refusal.

It used to be that a marriage or common-law relationship with a Canadian or permanent resident can almost guarantee a stay of removal and eventual grant of permanent residence to a foreign spouse who may have already lost status. However, the proliferation of bad faith marriages or so-called marriages of convenience have put even genuine relationships at a great disadvantage by also being refused for being found to be a "bad faith marriage" (defined as either non-genuine relationships or those which were primarily entered into for immigration purposes).

Once a removal order is issued against a temporary resident, there are administrative and judicial remedies that can be pursued to stay the removal process. However, these procedures and their effectiveness would depend on the specific circumstances in each case, as well as the favorable (or unfavorable) perspectives of the decision-makers.

Thus, the removal process does not simply mean that once a person loses status in Canada, he or she is immediately arrested by the authorities, detained and thrown on the next flight to the home country. There are various criteria, legal processes and principles involved which could result in varying treatments and outcomes.

It must be noted as well, that even permanent residents may become the subject of removal orders. However, that is already beyond the scope of this article.

As always, the above are meant for information purposes only and not as specific legal advice. To seek legal advice about your particular situation, please consult a trusted immigration legal counsel.

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