

Caregiver Pilots and Options for Disqualified Caregivers

As reported last month, the IRCC had launched the Home Child Care Provider (HCP) and the Home Support Worker (HSW) pilot programs which replaced the previous Caring for Children and Caring for People with High Medical Needs pathways.

This meant that effective 18 June 2019:

1. IRCC will not anymore accept permanent residence applications under the Caring for Children and Caring for People with High Medical Needs pathways
2. Caregivers from inside or outside of Canada must submit their work permit or permanent residence applications under the new HCP and HSW pilot programs
3. IRCC will not anymore process initial work permit applications from outside of Canada under the temporary foreign worker programs for LMIA applications that were submitted after 18 June 2019

About a month after the announcement in June 2019, the IRCC revised the instructions which previously required "proof of funds" for applicants under the new caregiver pilots. It clarified that there are no additional financial requirements for caregivers who will apply for work permits and/or permanent residence under the HCP and HSW pilot programs. Similar to the other economic class programs, if the applicant caregiver has a guaranteed job offer or is already employed in Canada, they will not need to provide evidence of funds corresponding to the low-income-cut-off level for their family size.

Furthermore, the IRCC stated that the disclosure of the employer's income in the offer of employment to the caregiver is now optional. However, this information may still be required by IRCC at a later time, as it deems necessary.

All other requirements for the new caregiver pilots, including: 1. education that is equivalent to a completed one-year Canadian postsecondary credential, 2. a minimum score of CLB 5 in an official English (or French) language test, and 3. two years of full time work within the last three years, remain. Despite strong clamor from caregiver advocates to remove if not reduce the education and language requirements, IRCC appears steadfast in keeping these requirements as they are perceived to be necessary in ensuring that the caregivers and their families will integrate more quickly in the Canadian work force.

In light of these developments, what are the options for caregivers already in Canada who may not meet the requirements under the new pilot programs?

For now, there is the Interim Pathway for Caregivers which had been extended for another three months, or from 8 July 2019 to 8 October 2019. This alternative pathway to permanent residence is for caregivers who 1. are authorized to work in Canada, 2. completed at least a year of authorized full time work as a caregiver (instead of 2 years, under the existing pilots), 3. have completed the equivalent of at least a completed high school education (instead of one year postsecondary credential), 4. obtained a minimum score of CLB 5 in an official English or French language test, and 5. is not inadmissible for any reason.

Another possibility and perhaps lesser known, is that of applying or reapplying for permanent residence under the Live-in Caregiver Program (LCP). Indeed, the LCP is now defunct and the IRCC website says that "the LCP is closed to new applicants." However, the LCP is only closed to new applicants from outside of Canada who would be applying for initial work permits.

Currently, IRCC may still accept PR applications under the LCP if the caregiver meets the following requirements under the program: a. completed at least two years of authorized full time live-in caregiving work in Canada within four years from initial arrival on a valid LCP work permit; and b. the initial caregiver work permit was based on a positive LMO or LMIA that was applied for on or before 30 November 2014. People may tend to conclude that since it had nearly been five years from this date, there will not anymore be caregivers who still qualify under this program.

In fact, there can still be a number of instances when caregivers may still qualify for permanent residence under the LCP. In some cases, a caregiver's PR application under the LCP may have been previously refused for reasons unrelated to their two years of full time live-in caregiver work but who were still able to continue working based on their valid open work permits. If these caregivers are now able to overcome the officer's reasons for the previous refusal, then they can resubmit a new application for permanent residence under the LCP.

If there are inadmissibility issues, there is also the possibility of requesting an exemption from inadmissibility on humanitarian and compassionate (H&C) grounds. Depending on the type of inadmissibility and the circumstances of the applicant caregiver and their family, it may be worth exploring this legal remedy.

However, the H&C route is a highly-discretionary option which could still leave many caregivers in limbo, despite having served Canadian families in a job that many Canadians would rather avoid, while enduring lengthy separation from their own families.

Therefore, although the introduction of these recent changes in the caregiver programs are greatly appreciated, they are sadly not enough in sending the message that Canada is truly "caring for our caregivers." For if there will continue to be caregivers in our midst who will be left without any prospect of becoming full members of Canadian society, how fair and inclusive is that?

Given their invaluable but often unheralded contributions to Canadian families, granting permanent resident status to all out-of-status caregivers in Canada is more than well-deserved.

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