

Reprieve for Caregivers and Construction Workers

After a long wait, IRCC finally launched on 18 June 2019, the new caregiver programs which replaced the Caring for Children and Caring for People with High Medical Needs pathways. The new programs, called the Home Child Care Provider (HCP) and the Home Support Worker (HSW) pilots, were created under Ministerial Instructions and will be in effect for the next five years.

Moreover, the Interim Pathway for Caregivers had also been extended for another three months, from 8 July 2019 to 8 October 2019.

Lastly, the IRCC also launched a temporary public policy that will grant a pathway to permanent residency for 500 of out-of-status construction workers (and their qualified dependents) in the Greater Toronto Area. The applicants will be assessed by the Canadian Labour Congress which will then refer those qualified under this program to IRCC. Further implementing details have not been released as of this writing.

What Changed, What Remained, in the New Caregiver Pilots

The HCP and HSW pilots will authorize the issuance of occupation-specific work permits to the caregiver applicants, an open work permit for the caregiver's spouse and study permits for their qualified dependent children.

Under these new pilot programs, the visa officer will assess not only whether the caregiver meets the requirements for the initial work permit issuance, but also whether the caregiver and their dependents will qualify for permanent residency. However, the permanent residency will only be granted after the caregiver completes the required two years of full time work as a home childcare provider or as a home support worker in Canada as these occupations are defined in the national occupation classification.

These pilot programs eliminate the need for prospective Canadian employers to obtain labour market impact assessments (LMIA) when hiring caregivers from outside of Canada. They will only have to prove the genuine need for the caregivers' services, their financial capacity to pay the required wages and other benefits and their willingness and ability to comply with applicable employment standards.

Caregivers under these new pilots will have greater flexibility in moving from one employer to another (subject to compliance with reasonable contractual obligations) or possibly work for more than one employer in the same occupation. Hence, it is expected that caregivers will not anymore be forced to endure abuses which occurred all too often in the past because they were tied to a specific employer and needed to obtain a new LMIA and work permit to work for another.

However, as in the previous Caring for Children and Caring for People with High Medical Needs pathways, the new pilot programs kept the education and language requirements, i.e. education that is equivalent to at least one-year completed Canadian postsecondary credential and a minimum language score of CLB 5 in all abilities (reading, writing, listening and speaking) in IELTS or CELPIP for English and TEF or TCF for French.

Pros and Cons of the New Caregiver Pilots

These new programs are indeed good news for those who are able to meet the job offer, education and language requirements. The ability to bring their family members to Canada as temporary residents (workers or students) is also a positive development as this will not only prevent lengthy family separation between caregivers and their family members, but will also remove the uncertainty of being granted permanent residency after completing the required two years of full time caregiving work.

However, although the new pilots are being touted as a "guaranteed path to permanent residency" for caregivers and their families, this may not necessarily be so. In fact, the two-step process may still pose serious challenges arising from the hybrid and conditional status of the caregivers who will arrive under these new pilot programs.

For one, the period within which to complete the 24-month work requirement has been reduced to 3 years from the previous 4 years. Although it helps that the work permits are now occupation-specific instead of employer-specific, the reduced time frame may still prevent some caregivers from fulfilling the 24-month work requirement for various reasons, e.g. if they would like to switch from being a home caregiver for children to a home support worker for an elderly; if they suffered a prolonged illness which prevented them from working; or if they had to leave an abusive employer and were unable to quickly find another.

Moreover, the vulnerability of a caregiver does not end simply because their work permits are not tied to a specific employer. By the very nature of their job as workers inside their employers' homes, isolated and unable to assert their rights as organized workers, being new to this country without a strong support network, are factors which may still lead to their becoming victims of abuse and exploitation not just from employers but also from recruitment agents and other unscrupulous individuals.

Hence, the same possibility of losing their status or failing to obtain their permanent residency still exists under this new program. Moreover, these new programs will entrap caregivers who are already in Canada but who are unable to meet the new requirements for permanent residency, whether under the new pilots or the extended interim caregiver pathway.

If those who do not meet the new permanent residency requirements will be left to rely on the highly-discretionary options such as the H&C (humanitarian and compassionate) route, can we still claim that we are truly "caring for our caregivers"? Or are we just perpetuating the colonial practice of siphoning cheap labour from poorer countries then throwing them out after benefiting from their services because they were deemed undeserving of permanent residency?

The recent temporary public policy creating a PR pathway for out of status construction workers in the GTA is a good start. It will be even better if a similar policy will be created for the benefit of the equally in-demand and deserving migrant caregivers.

This article is meant for information purposes only and not as specific legal advice. The author is a Filipino-Canadian immigration lawyer and may be reached at deanna@santoslaw.ca or tel. no. 416-901-8497.