

Canada's Own Family Reunification Issues

Only the most hardened of hearts will not be moved by video footage and photos of children separated from their parents in the aftermath of the United States' zero tolerance immigration policy.

While we express concern over, or join protests against, this heartbreaking news from south of our border, we must not forget that Canada has its own similar issues, albeit committed in subtler, but not necessarily more justifiable ways.

Since one of the main objectives of Canada's immigration policy is to reunite families, priority is supposedly given to family class sponsorships and the automatic inclusion of spouses and dependent children in most permanent residence applications. Sadly however, this objective is often thwarted in ways that many people may not even realize.

Rigid Application of Age Limit for Dependent Children

The age limit for dependent children in Canadian immigration law had undergone changes a number of times. At present, the definition of dependents covers children who are below 22 years old, unmarried and not in a common-law relationship. Although this is perhaps an acceptable cut-off age in Western cultural settings, this is often not the case in other, more conservative and close-knit family settings, particularly from countries where Canada sources many of its immigrants.

In the Philippines for instance, it is not unusual for children to continue to depend on their parents long after reaching 22 years old or even after having gotten married or their own children. Children can therefore be considered dependents of their parents long after they reach 22 years old. Thus, the present legal definition of dependent children in Canada's immigration policy does not necessarily meet the family reunification objectives of the very immigrants it wishes to attract.

Parent-Grandparent Sponsorship Lottery

For the longest time, the processing time for sponsoring elderly parents and grandparents in Canada was taking a ridiculously long 5 to 10 years. In an attempt to reduce lengthy processing times, the government not only imposed a quota on the annual intake of parent-grandparent sponsorship applications, it also introduced a lottery system whereby prospective sponsors are picked at random before they are allowed to submit applications to sponsor their parents and/or grandparents.

Hence, many prospective sponsors are forced to wait year after year to be picked in this lottery system. Meanwhile, their parents and grandparents are advancing in age and may become too old to migrate to Canada, or worse, become medically inadmissible if they will be found to have a medical condition that will impose an excessive demand on Canadian health and social services.

Unjust Consequences of Regulation 117(9)d

The controversial section 117(9)d of the *Immigration and Refugee Protection Regulations* is another beast that continues to rear its ugly head when it should have been slain a long time ago.

This section provides that family members who were not disclosed and/or examined when the sponsor became a permanent resident of Canada cannot anymore be sponsored under the family class. Often, those caught by this regulation have failed to disclose a family member inadvertently or for reasons that were beyond their control. Although the legal option of seeking an exemption from this regulation on humanitarian and compassionate grounds is available, the highly discretionary nature of this remedy is often not the most desirable due to cost, delays and a high risk of refusal.

Therefore, regulation 117(9)d has led and continues to lead to permanent family separation for families, including dependent children and spouses.

Marriage Fraud Crackdown Prejudicing Genuine Spouses

Despite government warnings and stricter scrutiny of spousal sponsorship applications, sponsorship fraud still persists. Meanwhile, there are couples in genuine, committed and loving relationships who are forced to endure prolonged family separation due to lengthy processing delays of their sponsorship applications. This can be partly due to the immigration officers' sometimes overzealous attempts at disputing the genuineness of marital/common law/conjugal relationships. For instance, in highly-intimidating immigration interviews, visa officers rarely consider the fact that "failure" in such interviews can often be attributed to language barriers, nervousness or even cultural differences or misunderstandings.

We understand the immigration officers' reasonable efforts to prevent abuse of the spousal sponsorship process since there are truly those who try to use this as a way to circumvent Canada's immigration requirements. However, these efforts must be balanced by a healthy dose of empathy for couples who are applying in good faith. There also needs to be adequate training of immigration officers to equip them with a better understanding of cultural differences and personality types that will avoid a one-size-fits-all standard for assessing the genuineness of marital/common-law/conjugal relationships.

Caregivers in the LCP Backlog

Lengthy delays in achieving family reunification is a perennial complaint among live-in caregivers and their families. A huge part of the reason is that those who enter Canada under the Live-in Caregiver Program (LCP) are initially granted work permits and are not allowed to bring their families at the outset. It is only after having satisfied the requirements of the LCP (i.e. two years of full time live-in caregiving work within four years of arrival) will they qualify to apply for permanent residence for themselves and their families, which could easily take several more years to be processed. Thus, even long after the LCP had been repealed and many failed promises to expedite processing, there are still thousands of caregivers whose permanent residence applications are languishing in the current immigration backlog.

These are just some examples of situations when serious family reunification issues arise in the Canadian immigration context. So even as we feel sorry for the victims of the cruel immigration antics of our neighbor, we might do well to also be concerned about similar injustices occurring in our very own backyard.

The author is a Canadian immigration lawyer and may be reached at deanna@santoslaw.ca.