

## **Interim Pathway for Caregivers**

There was a lot of rejoicing in the caregiver community on 23 February 2019 when the Immigration Minister Ahmed Hussen launched at a news conference, some major changes to the existing caregiver programs.

The first major change is about the new caregiver permanent residence pilot programs that will replace the current pilot caregiver pathways when these expire on 29 November 2019. According to IRCC, the new caregiver pilot programs will have the following features:

- a) the caregivers will be assessed for permanent residence before they come to Canada;
- b) the caregivers will be issued occupation-specific (instead of employer-specific) work permits that will allow them to change employers without need to obtain new work permits;
- c) the caregivers' spouses will be granted open work permits and their dependent children will be issued study permits;
- d) upon completion of two years of work experience, the caregiver (and their dependent family members) "will have access to a direct pathway" for permanent residence in Canada.

No further details have been provided for these new caregiver pilot programs other than that they will be announced soon and before the November 2019 expiry of the current pilot programs.

Meanwhile, the second major change introduced is the Interim Pathway for Caregivers (IPC) that will be open to new applications for a three-month period only - from 4 March 2019 to 4 June 2019. This program is meant to provide a permanent residence option for those who, "in good faith, have come to Canada and are providing care to Canadians, without a clear pathway to permanent residence," according to IRCC.

More specifically, the IPC will authorize the grant of permanent residence to caregivers who will be able to meet the following criteria:

- a) completion of at least one year of full time authorized work as a caregiver (for children or for people with high medical needs or a combination of these jobs) since 30 November 2014;
- b) completion of education that is equivalent to a Canadian high school diploma (foreign credentials must be accompanied by a valid education credential assessment);
- c) completion of an official English language test with a minimum score equivalent to CLB 5;
- d) at the time of PR application, hold a valid work permit, on implied status or eligible for restoration, other than those who are holding a live-in caregiver program work permit.

The IPC is indeed a welcome development for many caregivers who will be unable to meet the two years of full time work required under the present caregiver pathways before they expire in November 2019 but who have completed at least one year of combined work in any of the qualified caregiving occupations. It also allows those who are unable to meet the equivalent of at least a one year post secondary education credential but only have the equivalent of at least a Canadian high school diploma, among others.

Furthermore, as in the old live-in caregiver program (LCP), the caregiver may submit an application for an open work permit that will allow the applicant to work for any employer in Canada while the IPC permanent residence application is in process. This concurrent open work permit application option was removed under the present caregiver pathways and was replaced by

the more restrictive bridging open work permit (BOWP) which can only be applied for after the IRCC issues an acknowledgment of receipt of the PR application and if the caregiver's last work permit is expiring in four months or less. Sadly, not all caregivers had been able to meet the BOWP requirements for various reasons that are often beyond their control.

A further accommodation provided by IRCC under the IPC program is that of accepting evidence that the caregiver applicant has applied for an education credential assessment and/or scheduled to take an official English language test, if these documents will not be received by 4 June 2019.

Although the IRCC is granting some flexibility in some aspects of the application, the very short window of opportunity for those who intend to apply under the IPC makes it extremely important that the permanent residence application is done correctly. If the application is incomplete and is returned after the IPC ends on 4 June 2019, then the caregiver applicant would have lost a very rare opportunity. Any future PR application will then have to meet requirements under the new caregiver pilots (details of which are still unknown) or be based on other less guaranteed and highly-discretionary options.

As can be gleaned from the requirements listed above, the IPC still excludes the following:

- a) those who were authorized to work under the live-in caregiver program;
- b) those who have lost their temporary foreign worker status and are not anymore eligible for restoration of their temporary resident status in Canada;
- c) those who intend to reside in Quebec; and
- d) those who are inadmissible to Canada.

Thus, the IPC clearly has its limitations, which would still leave a lot of caregivers unable to qualify for permanent residence for various reasons such as the following typical scenarios: a) if they will be unable to complete at least a year of qualified caregiving work before 4 June 2019; b) if they have lost temporary foreign worker status due to their inability to provide a valid labour market impact assessment required to renew a work permit even if the caregiver will continue to work for the same employer; c) if they are unable to meet the language and education requirements; or d) if the caregiver and/or a family member is found to be inadmissible at the permanent residence application stage and after having completed the required caregiving work on valid work permits.

For those who would be unable to qualify under any of the existing permanent residence pathways for caregivers, i.e. the live-in caregiver program, the caregiver for children pathway, the caregiver for people with high medical needs pathway or the interim pathway for caregivers, one alternative option might be to apply for or request consideration on humanitarian and compassionate grounds. However, this type of application is highly discretionary and has its own legal requirements and implications based on the applicant's particular circumstances.

While this recent news may appear to be a boon for many caregivers, there are still many others who will be excluded. Hence the advocacy for the rights and welfare of vulnerable migrant workers, including caregivers, must continue.

This article is meant for information purposes only and not as specific legal advice. Each case is unique and is best discussed in detail with a qualified, experienced and trusted immigration legal advisor to increase the chances of success.

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