

COVID-19, Temporary Residents and Removals

About a month ago, the coronavirus fears focused on the Chinese based on the fact that the first reported cases originated from Wuhan, China. Now, the disease referred to as COVID-19 has been labeled a pandemic by the World Health Organization because it has affected almost every nation on the planet.

The very rapid acceleration of COVID-19 cases worldwide has made people realize that this is indeed an international problem and cannot be blamed on a single country or ethnicity. The ensuing lockdowns and travel restrictions imposed by various countries in efforts to prevent further spread of the virus will no doubt have a significant impact on immigration rules, in the near or distant future.

For those who might be trapped in Canada amidst the growing travel restrictions by other countries, it might help to revisit the Canadian immigration rules with respect to temporary residents.

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 have inadvertently lost their status due to ignorance, misinformation or carelessness. With COVID-19, we can add public health and safety to the list.

Those who may have lost their status are often 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.

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 may 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 or by agreeing to unscrupulous advice such as concocting stories to support one’s application for extending one’s temporary residence or obtain permanent residency 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 similarly 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.

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, policies and principles that may come into play and which could result in varying outcomes.

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 advisor.

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