Changes to Medical Admissibility Rules

After 40 years, the Canadian immigration policy on medical admissibility due to "excessive demand" had recently been updated to "strike a balance between protecting publicly funded health and social services" and becoming more consistent with "current views on the inclusion of persons with disabilities."

These changes, which are expected to take effect on 1 June 2018, consist of the following:
1. increasing the cost threshold for medical inadmissibility to three times the previous level;
2. amending the definition of social services by removing references to special education, social and vocational rehabilitation services and personal support services; and
3. implementing administrative reforms such as providing further training to immigration and medical officers, centralizing medical admissibility assessment in one office and improving language that will explain the process to applicants.

According to Immigration Refugees and Citizenship Canada (IRCC), "Every year, approximately 1,000 applicants for permanent and temporary residence in Canada receive a medical inadmissibility finding. It is determined that their health condition may adversely affect health or social services, and this may lead to them being found to be medically inadmissible. About 200 to 300 cases relate to special education services for children."

Although no specific medical condition or disability leads to automatic inadmissibility, applicants may be found inadmissible if the services required to treat their health condition or that of an accompanying dependent is anticipated to cost more than the annual cost threshold which, for 2017, is $6,655 per year and $33,275 over five years.

With the recent change, this amount will be tripled, or increased to $19,965 per year. The increased cost threshold and the removal of special education, certain rehabilitation and personal support services will help reduce the discrimination against persons with disabilities arising from the current system.

Many of those who were adversely affected by the previous narrow definition of medical inadmissibility due to excessive demand are people who would otherwise qualify under one of the economic classes based on their potential to make a substantial contribution to the Canadian economy. Many refusals were also based on the applicants' family members who may have a health condition or disability that could otherwise be "readily accommodated in Canadian society." It is expected that the policy change will benefit people requiring relatively low medical and social services costs such as people with intellectual disabilities, hearing or visual impairment, those requiring publicly-funded generic prescription drugs, among others.

Although these changes are expected to eliminate a majority of medical inadmissibility cases, many advocates feel that these are not enough as the current policy can still exclude those requiring more expensive health and social services. These may include those with

severe physical or mental disabilities or chronic illnesses that are often deemed medically inadmissible for allegedly imposing a "burden" on Canadian health and social services. As one advocate put it, "Someone like (the late) Stephen Hawking would still be deemed medically inadmissible even under these new rules."

Moreover, a lot of subjectivity comes in when assessing the potential cost of the applicants' and/or their family members' medical and social services needs. For instance, not all applicants are aware of how to effectively respond to procedural fairness letters in medical inadmissibility cases or are unable to provide adequate evidence to refute the medical officer's initial assessment (which is often generalized rather than individualized).

Thus, advocates agree with the Standing Committee on Citizenship and Immigration's recommendation that the excessive demand provision under Canada's immigration law be fully eliminated. In this regard, the IRCC's recent policy pronouncement also assured that, "Going forward, the Government agrees with the Standing Committee's recommendation to eliminate the policy and will collaborate with provinces and territories towards its full elimination."

Although a date of June 1, 2018 had been given as the effective start date for the recent changes, detailed implementation guidelines and/or transitional provisions for existing applications which will be affected, have yet to be released.

Meanwhile, it must be noted that the excessive demand provision which lead to medical inadmissibility generally applies only to applicants (and their dependents) for permanent residence under the economic and family classes. Under existing Canadian immigration law, certain categories of permanent residence applications are exempt from the excessive demand provision, namely refugees and certain family class applicants (i.e. sponsored spouses/common-law partners and dependent children).

As always, the above is 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 professional.

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