



Proposed “Conditional Permanent Residence” for sponsored spouses

Comments on the notice published by Citizenship and Immigration Canada in the Canada Gazette, Part I, Vol. 145, No. 13 – March 26, 2011

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On March 26, 2011 Citizenship and Immigration Canada published a notice in the Canada Gazette proposing to introduce a “conditional” permanent residence period of two years or more for sponsored spouses and partners who have been in a relationship of two years or less with their sponsors.

The Canadian Council for Refugees (CCR) is firmly opposed to the proposal. In the view of the CCR, the introduction of conditional permanent residence would represent a major step backwards in Canadian immigration policy, would increase inequalities in relationships between spouses, and would put women in particular at heightened risk of violence.

Conditional permanent residence creates a power imbalance

Making permanent residence for the sponsored partner conditional puts all the power into the hands of the sponsor, who may use the precarity of the partner’s status as a tool for manipulation – at any time, the sponsor can declare the spouse fraudulent. This can be a constant threat and source of fear for the sponsored person, who faces the risk of being deported.

We note that this power imbalance affects all sponsored partners, regardless of the genuineness of the relationship. It also reinforces unequal gendered power dynamics, particularly since the sponsored spouse or partner is more often than not a woman.

The power imbalance is also likely to damage relationships even where there is no intention to manipulate or victimize the sponsored partner, since the knowledge alone of the possibility of denunciation may in some cases create feelings of fear and distrust.

Conditional permanent residence will trap people in unhappy and even abusive relationships

Making permanent residency conditional on staying in the relationship for two years will force couples to remain together after the relationship has become dysfunctional. Even more disturbingly, women who are suffering psychological or physical abuse from their partner may feel obliged to remain in the relationship, for fear of losing their status.

According to the notice, a process would be developed to allow sponsored spouses in abusive situations to come forward without facing enforcement action. This is not a solution. Given that many sponsored immigrants, especially women, have little knowledge of their rights, it is not realistic to suggest that they would come forward to the immigration authorities to report an abusive relationship. It is also unfair to place the burden of proof of abuse on the abused woman.

Negative impact on children

The proposal can also be expected to have harmful impacts on children. For example, children accompanying a parent who is a sponsored spouse will also be hurt if their parent remains in an abusive home, for fear of loss of status. Children may also face disruption in their lives and potential separation from one parent if the sponsored parent is removed from Canada.

The notice fails to address the issue of the best interests of the child, and how the proposed measure would affect children. This is a serious shortcoming, given Canada's obligation, as a signatory to the Convention on the Rights of the Child, to take into account the best interests of the child.

Risk of racial, national or ethnic stereotyping and discrimination, and of malicious denunciations

The suggestion that some cases would be "targeted for fraud" raises concerns of possible racial, national or ethnic stereotyping and discrimination. It is unclear what is intended by these words, but they suggest the possibility of certain relationships being identified, either by immigration officials or others, as likely fraudulent. There is the risk that this identification process may be influenced by perceptions that are tainted by stereotyping.

Also of concern is the opening of the door to malicious denunciations. Individuals who, for whatever reason, wish to harm a sponsored spouse may make false accusations.

Experiences in other countries

The notice mentions that similar policies are already in place in the UK, Australia and the U.S. Experts in those countries have reported that conditional status puts women in a vulnerable position and gives increased power to abusive sponsors. The increased risk of violence against women and the inadequacy of measures designed to protect them are concerns in all countries.

Southall Black Sisters in the UK gives the following example:

An Asian woman was too afraid of being removed from the UK and of violent reprisals, and ignorant of her rights and services available, to report domestic violence while she lived with her husband during the probationary period.¹

The Australia Immigrant and Refugee Women's Alliance reported that for many immigrant women "without permanent residency living in a domestic violence situation one of the major restrictions that they face in accessing support services is the threat of deportation from sources such as their spouse and host family. In addition, withholding vital information from women about the status of their visa or application for permanent residency plus, if applicable, their rights to custody over their children may be considered manipulative and can cause further stress and anxiety for women in domestic violence situations."²

¹ "Domestic Violence, Immigration and No Recourse to Public Funds: A Briefing to amend the Domestic Violence, Crime and Victims Bill", April 2004, <http://www.southallblacksisters.org.uk/research.html>

² AIRWA Submission to the Australian Parliamentary Group on Population and Development, 16 March 2011, http://www.pgpd.asn.au/9%20May%202011%20Submissions/AIRWA_Submission.doc

Lack of evidence that there is a significant problem

The notice acknowledges that there is a lack of evidence about the extent of “marriage fraud”. Given that there is no evidence that this is a widespread problem, it is unfortunate that the government is exploring this proposal, which would create another barrier to family reunification, and make many women vulnerable to abuse.

We also note that we need to treat with caution claims by individuals that they have been victims of “marriage fraud”, as for example those made at the town hall meetings held by the Minister. Where relationships break down, there is usually more than one side to the story. It is possible that investigation would show that in some of these cases there was no “marriage fraud”, or even that the complainants contributed to the breakdown by abusive behaviour towards their partner.

Proposal would likely not achieve the stated objective

According to the notice, the proposal is intended to deter individuals who might otherwise use a marriage of convenience to circumvent immigration laws. However, it is not clear that two-year conditional status would achieve the desired deterrence effect, since if individuals are sufficiently motivated they could simply remain in the relationship for the two year period. The notice does not provide any evidence to show that the proposed measures would have the intended effect.

Negative portrayal of immigrants

We are also concerned that characterizing relationship breakdown as marriage fraud adds to the increasingly negative portrayal by the government of newcomers, and thus reinforces xenophobic tendencies within society.

Need to address barriers to family reunification

Instead of pursuing this proposal, we urge Citizenship and Immigration Canada to turn its attention to reducing the well-documented existing barriers to family reunification, including the unacceptably long processing delays in too many regions of the world, notably at the Nairobi visa office.