



Proposed “Conditional Permanent Residence” for sponsored spouses

Comments on the notice published by Citizenship and Immigration Canada in the Canada Gazette, Part I, Vol. 146, No. 10 — March 9, 2012

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On March 9, 2012 Citizenship and Immigration Canada published a news release proposing to introduce a period of “conditional” permanent residence of two years for sponsored spouses and partners who have been in a relationship of two years or less with their sponsors and who have no children in common with their sponsor at the time of sponsorship application.

Despite the slight revisions since the initial proposal on March 26 2011, the Canadian Council for Refugees (CCR) remains opposed to the proposal. The CCR continues to question why such a measure is being considered without evidence that marriage fraud is a significant problem. The introduction of conditional permanent residence would represent a step backwards in Canadian immigration policy with potentially major consequences for some individuals. It would increase inequalities in relationships between spouses and would put women, in particular, at heightened risk of violence, trapping them in abusive relationships for fear of being deported. While the CCR appreciates the exemption for abused and neglected partners, we remain convinced that this exemption will not be effective at protecting abused sponsored spouses.

Lack of evidence that there is a significant problem

As with the March 2011 notice, the more recent one acknowledges that there is a lack of evidence about the extent of relationships of convenience in Canada. The notice cites the figures from sponsorship application screening in overseas visa offices, noting that approximately 16% of spousal sponsorship applications were refused in 2010, and that it is estimated that most of these cases were refused on the basis of a fraudulent relationship. Considerable resources are thus already being allocated to prevent relationships of convenience at the source, while there is still no evidence that they pose a significant problem in Canada.

In addition, existing legislation allows prosecution of sponsored partners who engage in marriages of convenience, and leads to their deportation if it is found they have misrepresented their relationship in their application. This legislation has been used successfully by duped sponsors.

Claims by individuals that they have been victims of “marriage fraud” need to be treated with caution, as for example those made at the town hall meetings held by the Minister. When relationships break down, there is always 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.

The CCR believes that the problems this measure will create for abused partners and spouses are much more significant than the problem it purports to address. Our members are very concerned

that the government is considering passing a potentially harmful measure on the basis of insubstantial evidence.

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 deterrent effect. If individuals are entering into matrimony for the purpose of obtaining permanent residence in Canada, it is likely that they will simply remain in the relationship for the two-year period.

Making permanent residence conditional on staying in the relationship for two years will have three foreseeable outcomes:

1) *Relationship breaks down and couple stays together*

In the case of a genuine relationship that breaks down – whether because of abuse or for other reasons - it will force couples to remain together after the relationship has become dysfunctional, and possibly dangerous.

- Relationship breakdown due to violence: CCR members have seen many cases of sponsored spouses whose marriages were entered into based on sincere relationships, but whose partners only became violent or abusive once they were married and living together in Canada. This scenario sometimes plays out in cases of arranged marriages that are sincerely entered into, but may break down if the sponsored spouse discovers that her partner is violent or abusive. Non-fraudulent sponsored partners will often stay in their abusive relationship for fear of deportation.
- Non-abusive relationship breakdown: It is not abnormal for sincere relationships to break down within the first few years. The period of conditionality will force partners to remain in an unhappy relationship to prevent deportation, which can seriously affect mental health and incur other negative consequences.

2) *Relationship breaks down and couple separates, or sponsor abandons spouse*

In the case of a genuine relationship that breaks down and the couple cannot remain together, it will result in the deportation of a sincere sponsored spouse, without consideration of the impact this will have on them.

Another concern is the issue of abandonment. Our members have encountered cases where the sponsor has not been violent, but has abandoned his spouse, leaving her alone and confused. If this measure is adopted, an abandoned spouse will be deported through no fault of her own, and will face vulnerability in her country of origin. As one victim of such abandonment by her sponsor has noted, this measure will allow men to exploit foreign women by marrying them, using them, and then abandoning them before the conditional

period ends. In such a case there would be no evidence of abuse during the relationship, and the abandoned spouse would not be eligible for the exemption.

3) *Insincere sponsored spouse waits out conditional period*

In the case of a marriage of convenience, it will result in the sponsored spouse waiting out the two year period in order to obtain permanent residence status in Canada.

No evidence has been presented to indicate that people entering relationships with the objective of obtaining legal status in Canada will be deterred by the conditional period. It is reasonable to assume that they will simply wait out the two year period in order to attain their objective.

A client of a CCR member organization has brought a case using the existing legislation to have his ex-wife, who left him within weeks of arriving in Canada, deported on the grounds of misrepresentation. He is concerned that the proposed period of conditional permanent residence will do nothing to hinder fraudulent spouses, who will simply wait out the period. He believes it will further complicate the problem of the duped sponsor because, when the sponsored spouse leaves the sponsor after the conditional period, the sponsor will find it difficult to prove that the spouse was fraudulent, or that they misrepresented themselves in their application. A partner that lasts two years in a relationship will not *look* like a fraudster. In such cases, the new measure would actually counteract the existing legislation.

Given these foreseeable impacts, it would be reasonable to assume that this measure will have a greater impact on sponsored partners who enter into the relationship with their sponsor sincerely, forcing them to remain together after the relationship breaks down or because of the impacts of deportation on the sponsored partner. It will have little impact on those who enter into relationships for fraudulent reasons, who simply comply with the measure.

Ineffective exemption for sponsored spouses in abusive relationships

The CCR believes that the exemption proposed by CIC for sponsored spouses in situations of abuse or neglect will not be effective. Sponsored spouses face several barriers and obstacles that will prevent them from being able to take advantage of this exemption. These include:

Access to information and language barriers: Many sponsored immigrants, especially women, have little knowledge of their rights. It is thus not realistic to suggest that they would come forward to the immigration authorities to report an abusive relationship. Many sponsored spouses in Canada speak little English or French, and this hinders their access to information, and may also prevent them from speaking out and seeking the exemption. As a result, many sponsored spouses will not be able to escape their abusive relationships, despite the exemption.

Burden of proof: Sponsored spouses in situations of abuse are vulnerable. The onus of proving a) their own abuse and b) that they cohabited with their sponsor until the cohabitation ceased as a result of the abuse or neglect will be enough to deter many from

applying for the exemption, in the case where they have managed to find out about its existence. It is unfair to place the burden of proof of abuse on the abused person.

Cost: CIC's cost-benefit statement concedes that there would be some costs to the sponsored spouses or partners in obtaining and providing evidence in instances of abuse or neglect. This places yet another burden on the vulnerable abused partner, who in many cases has no resources of her own. It is not fair to incur costs on an abused person so they can prove that they have been abused. Given such costs, it is unrealistic to assume that this exemption will be effective at protecting abused partners.

Pressure resulting from contingency of family sponsorship: In addition to these obstacles, if the abused partner has sponsored family members whose status is also contingent on their meeting the two-year condition (as outlined in the proposal), they will be even less likely to leave the abuser because of family pressures or responsibilities.

The CIC Regulatory Impact Analysis Statement acknowledges that a majority of comments received during consultations with the provinces and territories, as well as comments from 84 respondents during the 30-day comment period (mostly from social service providers and immigration experts), identified concerns that a conditional measure would increase the vulnerability of sponsored spouses and partners to violence, and this despite the fact that the March 2011 proposal mentioned that provisions would be made for victims of violence.

While the exemption is well intended, it will not be effective for the reasons outlined above. Many partners will remain in the abusive relationship due to psychological or physical abuse from their partners, to lack of knowledge, to inability to have recourse to the provision, or to fear of losing their status.

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. The sponsor may thus use the precarity of the partner's status as a tool for manipulation - at any time, the sponsor can declare the spouse fraudulent. This would 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. This goes against the value of gender equality.

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.

Risk of malicious denunciations

It is of concern that this measure would open the door to malicious denunciations. Individuals who, for whatever reason, wish to harm a sponsored spouse may make false accusations to result in deportation.

Negative impact on children

The measure can also be expected to have harmful impacts on children. For example, children accompanying or born to a parent who is a sponsored spouse will be harmed if their parent remains in an abusive home for fear of loss of status. Children would 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, the best interests of the child must be taken into account.

It is not clear why the conditional period would apply to couples who have children together after applying for sponsorship, whereas it wouldn't apply to those who already have children at the time of application. Why should couples with children at the time of sponsorship application be privileged over childless couples or those who have children after applying for sponsorship?

Negative experiences in other countries

The notice mentions that similar policies are already in place in the UK, Australia and the U.S., and that Canada wants to bring its policies in line with those countries. However, 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.

Despite the *Family Violence Provisions* in Australia to mitigate the vulnerability produced by conditionality on abused sponsored partners, the Australia Immigrant and Refugee Women's Alliance reported:

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.¹

¹ 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

The UK also has a *Domestic Violence Immigration Rule* intended to counteract the vulnerability produced by conditionality for abused sponsored partners. However, Southall Black Sisters expressed similar concerns, giving 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.²

Regarding the issue of providing evidence, the same UK organization stated:

[T]he type of evidence needed to prove domestic violence is not easily available. Due to the hidden nature of domestic violence and numerous problems with reporting, some victims are unable to provide the type of evidence currently required to qualify under the domestic violence rule.³

The CCR is concerned that bringing Canada's policies more closely in line with these countries will bring about the same challenges and harmful scenarios in Canada.

Negative portrayal of immigrants

Lastly, CCR members are also concerned that characterizing relationship breakdown as marriage fraud adds to the increasingly negative portrayal by the government of newcomers, and thus will only serve to reinforce xenophobic tendencies within Canadian society.

² "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>

³ Ibid.