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# ImmQuest

"Qui bene interrogat bene docet" "He who questions well teaches well"

Editors-in-chief: Cecil L. Rotenberg Q.C. and Mario D. Bellissimo; Associate Editor: Edward C. Corrigan

## The Live-In Caregiver Program

Edward C. Corrigan, B.A., M.A., LL.B.

The Live-In Caregiver Program (LCP) is one of the more modest yet successful initiatives that Citizenship and Immigration Canada (CIC) has undertaken. It addresses an identified labour shortage in Canada in that there are not enough live-in caregivers to care for children, the elderly and injured individuals in this country. It provides employment opportunities for residents overseas who meet the requirements of the program. Individuals

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## Live-In Caregivers: Before the Courts

Brenda Wong

In 1988, Justice Rouleau summarized the guiding principles of the Foreign Domestic Movement Program ("FDMP", now the Live-In Caregiver Program "LCP") in *Karim v. Canada*<sup>1</sup> as follows:

- The FDMP was created in response to the recognition that domestic workers were performing a valuable service, often forming significant ties to this country, but were generally less likely to achieve permanent residence status than other immigrants;
- The purpose of the FDMP is hence to facilitate the attainment of permanent residence status for foreign domestic

<sup>1</sup> (M.E.I) (1988), (1989) 21 F.T.R. 237.

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Please send your questions to *ImmQuest* care of Mario D. Bellissimo at [mdb@obr-immigration.com](mailto:mdb@obr-immigration.com). If you have any questions you would like asked of either Citizenship and Immigration Canada or the Canada Border Services Agency send it along and we will ask on your behalf.

# The Live-In Caregiver Program

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who apply for a Work Permit under the Live-In Caregiver Program must meet the requirements set out in *Immigration and Refugee Protection Act (IRPA) Regulation 112* and must qualify for Permanent Residence in Canada whether or not they intend to eventually seek permanent residence in Canada. [OP 14 para 5.2]

In 2006 Canada accepted 3,547 principal applicants under the Live-In Caregiver Program. With dependents the total number of new immigrants for 2006 under the Live-in Caregiver Program was 6,895. The official target goal was between 3,000-5,000. This number represented 2.6% of Canada's total immigration for 2006. It included 164 males and 3,383 females as principal applicants. This figure was an increase from 2,048 principal applicants for 2005. In 2004 there were 2,496 principal applicants and a total of 4,292 immigrants accepted under the Live-In Caregiver Program. (See *CIC Facts and Figures 2006: Immigration Overview: Permanent Residents* and the *CIC Annual Report to Parliament on Immigration: 2007*)

The Live-in Caregivers Program's objective as set out in the *CIC Manual IP 4 "Processing Live-in Caregivers in Canada"*: "Citizenship and Immigration Canada established this program to meet a labour market shortage of live-in caregivers in Canada, giving qualified foreign caregivers the opportunity to work and eventually apply for permanent residence within Canada." [OP 14 para. 2]

A live-in caregiver is defined as, "a person who provides child-care, senior home support care, or care of the disabled without supervision in a private household in Canada in which the person resides." [R 2 and OP 14 para. 6.3]

There are two ways to qualify for the Live-In Caregiver Program: [OP 14 para. 8.3]

- 1) education and training;
- 2) work experience.

## Education and Training Requirements

The education requirements are that the live-in caregiver must

have successfully completed the equivalent of Canadian secondary school. They must prove that they are able to compete in the Canadian labor market if they leave the care giving field after they become permanent residents. [OP 14 para. 5.3]

Under the education stream they must have completed training offered "as part of a formal education program at an educational institution accredited by the appropriate local education authorities." The Immigration and Visa officers will assess the quality of the program and determine whether it adequately equips the applicant to perform the duties required by the proposed live-in caregiver job. If the programs are deemed adequate, it will also be necessary to prove that the care giving training was completed. [OP 14 para. 5.4]

The total number of hours of courses taken must equal or exceed the equivalent of six months' full time training. The training and experience must be in a field or occupation related to the employment sought. A potential live-in caregiver may have training in early childhood education, geriatric care, pediatric or geriatric nursing or first aid. [OP 14 para. 5.4]

The requirement is for full time training for six months. It should be similar to the training offered by Canadian Community Colleges providing training in child care, health care or related fields. The course load at Canadian Community Colleges averages 25-30 hours per week. This education requirement is designed to include activity assignments for practicums for a student in an educational institution offering a live-in caregiver training. The applicant has to attend classes for a minimum of 25-30 hours per week for a six-month period. [OP 14 para. 5.5]

There is no specific list of courses required by CIC to meet these criteria. However, the Visa Officers will be assessing the legitimacy, quality, adequacy and relevance of the training programs offered in their regions including an assessment of whether the hours of classroom training are sufficient. Correspondence courses and part-time studies such as training taken on weekends do not meet the full time training requirement.

## Work Experience Requirements

To qualify under the experience stream the applicant must have completed "one year of full time employment, including at least six months of continuous employment with one employer, in that field or occupation, within three years immediately prior to

the day on which the person submits an application for a work permit to a visa office.” [OP 14 para. 2 b] Care giving experience in an institutional setting, daycare, crèche, senior citizens home, etc., should be considered especially when the applicant meets the experience requirement. [OP 14 para 5.4]

Care giving experience in an applicant’s own home would not normally qualify someone for the program, since the applicant will not likely have been in a paid employment situation. However, the Immigration Operations Manual OP 14 does note that there may be legitimate situations where the applicant was employed as a live-in caregiver by a relative. Applicants are responsible for satisfying the officer that they are paid for the work performed. [OP 14 para. 5.4]

Applicants must meet either the educational or the experience requirements in order to qualify for the Live-In Caregiver Program. [OP 14 para. 8.3]

There also is a requirement that the live-in caregiver must have a level of fluency in English or French that will enable them to function independently in an unsupervised setting and protect the persons in their care. Accordingly, they must be able to respond to an emergency situation by contacting a doctor, ambulance, police or fire department. They also must be able to answer the telephone, or the door, read the labels on medication and do any required communication with individuals outside the home in schools, stores, and other institutions. [OP 14 para. 5.6]

Proficiency in speaking, understanding and reading will also ensure that the caregivers understand their rights and obligations and are not dependent on their employer to interpret provincial labor legislation and employment standards. If they are fluent in the language, they will also be better able to seek outside assistance if they have “personal difficulties and if they find themselves in an abusive employment situation.” [OP 14 para. 5.6]

## Employers’ Responsibilities

Employers in Canada interested in hiring live-in caregivers must contact their local Human Resources Centres of Canada (HRCC). Employers must complete an EMP 5093, Application for Foreign Live-in Caregiver. In British Columbia the employer completes an EMP 5198, Live-In Caregiver Employment Contract. [OP 14 para. 7.0] All Employer Applications for the Live-in Caregiver Program are currently being processed through

the Human Resources and Skill Development Canada Centre in Downsview, Toronto. The telephone number is 1-866-556-5518.

For employers in Quebec consent of the government of Quebec is required under the Canada-Quebec Accord to admit live-in caregivers as temporary workers to that province. Accordingly, a Certificat d’acceptation du Quebec (CAQ) is required before issuing a validation. The employment contract must be signed before the CAQ is issued. However, obtaining a CAQ does not guarantee that the work permit will be issued as the live-in caregiver has to meet all of the federal government requirements in the Live-in Caregiver Program before being approved. [OP 14 para. 8.6] The government of Quebec has prepared a “Guide for Live-in Caregivers” which is available from the *Ministère des Relations avec les citoyens et de l’Immigration* (MRCI). [IP 4 para. 5.8]

Under federal law anyone who employs a live-in-caregiver under the Live-In Caregiver Program has to register as an employer with Canada Customs and Revenue Agency. They also must obtain a Taxation Number in order to make the proper deductions for income tax, employment insurance and for the Canada Pension Plan. It is the employer’s legal obligation to send these monies to the proper federal authority. The Employer must provide employees with a T-4 for Income Tax purposes and a Record of Employment when the employee’s job has ended. The Canada Customs and Revenue Agency has an information kit with the necessary forms and instructions as to how to comply with the law. [OP 14 para. 7.0] Live-in caregivers are eligible for public health coverage and workers’ compensation. [IP 4 para. 9.5]

The prospective employer is responsible for ensuring that there is an employment contact with the prospective live-in caregiver. This is a mandatory part of the program. By law, terms and conditions of the contract must be consistent with provincial employment standards. The employer will send the proposed contract to the live-in caregiver for review and signature before the job offered is validated by Human Resources Skills Development Canada. A signed contract is part of the documentation sent by the caregiver to the Visa Post. [OP 14 para. 5.7] CIC provides a sample employment contract. It is titled, “*The Live-In Caregiver Program: Sample Contract*.” It is available on the CIC website.<sup>1</sup>

The requirement for employers is that the job offer must be *bona fide* and has sufficient income to provide the wages and benefits for the live-in caregiver based upon provincial wage rates. The

<sup>1</sup> www.cic.gc.ca

position must be full time. The employer must be residing in Canada. The employer has to provide suitable accommodation for the live-in caregiver. The accommodation for a live-in caregiver should include privacy such as private room with a lock. The live-in caregiver must reside at the employer's residence to qualify for the program. [OP 14 para. 5.8] If the live-in caregiver does not reside at the employer's residence, works for two different employers or leaves live-in caregiver employment they will lose their status under the Live-in Caregiver Program and will not be able to get permanent residence status in Canada. [IP 4 para. 5.3]

A validated offer of employment is employer and job specific. If there is a change of an employer a new validation, a new employment contract and a new work permit must be obtained. CIC Officers are instructed to treat the new validation as a new application placed in the queue and cost recovery of fees applies. [OP 14 para. 7.1]

#### Documents Required for a Live-In Caregiver Work Permit [see OP 14 para. 8.2]

- proof of equivalence of Canadian Secondary School Graduation;
- proof of six months full time training or twelve months experience, including six months in one job, in the last three years related to the job in question;
- a valid and subsisting passport. It should be valid for the period of the Work Permit;
- An original birth certificate (Copies certified by a lawyer or Notary Public is usually sufficient);
- proof of civil status, i.e., an original marriage certificate, if separated or divorced, original certificates or written evidence of marital status if certificates are not available. This requirement is particularly important in countries where legal separation and divorce are not possible, e.g., the Philippines; [IP 4 para. 9.14]
- information on close family members. This data may not be required by all visa offices;
- letters of reference from previous employers;
- a copy of the employer's confirmation letter from HRSDC which provides the system file number and the job validation in the National Employment Service System, or as it is

generally referred to as the NESS;

- a copy of the employment contract which sets out the terms and conditions of employment signed by the employer and applicant;
- Applicants' criminal record check for countries where they have resided for more than six months. This check is not mandatory until an application for permanent residence is made but it is recommended as it is often easier to obtain these clearances while in the home country.

However, if this document is not provided the CIC Manual OP 14 states it is not "a reason to refuse a work permit unless the officer believes the applicant would be inadmissible on criminal grounds." [OP 14 para. 8.2] It would make a lot of sense to make this a mandatory part of the live-in caregiver application process given that they are entrusted with the care of Canadian residents and live in their homes. However, the Manual notes that, "Security check for applicant in certain countries (see IC 1, "Security and Criminal Screening of Immigrants") is required. [OP 14 para. 8.4] (IC 1 is an internal CIC document and is not available to the public or to lawyers.)

- Medicals are required for all applicants for the Live-in Caregiver Program under R30(1)(b) for, "Occupations in which protection of the public health is essential." These occupations include domestic workers or live-in caregivers, workers who give in-home care to children, the elderly, or the disabled and day nursery employees. (FW 1 "Foreign Worker Manual" para. 9.1, p. 75, 2007-12-05 and OP 14 para. 8.4)
- the processing fee for a Work Permit as set out in IR 5 "Immigration Cost recovery Processing." The fee is currently \$150.00.

The CIC Manual OP 14 also notes that, "Other documents may be required because of legal requirements of the country in which the applicant resides or as a result of country conditions as determined by the visa post." [OP 14 para. 8.2]

Applicants who provide false transcripts, or other false information will be refused under s. 16(1) of the *Immigration and Refugee Protection Act*. [OP 14 para. 8.3 at p. 15] They will be deemed inadmissible to Canada for providing false information.

There also is a booklet on the *Live-In Caregiver Program* which is available from Citizenship and Immigration Canada that has a

listing of employment standard contracts and live-in caregiver association contacts. [OP 14 para. 8.5] A counseling fact sheet on employment standards and other important information for live-in caregivers is also a part of the CIC Manual OP 14 "Processing Applicants for the Live-In Caregiver Program." [OP 14 Appendix B, C, D and E]

## Live-In Caregivers Responsibility

The live-in caregiver is responsible for renewing work permits or obtaining new permits. Renewals must be done before the expiry of the current permit. The live-in caregiver must get a new employer validation and a new work permit if they change employers. [OP 14 Appendix D]

If there is no change of employer, under a policy adopted by CIC on December 15, 2006, the initial live-in caregiver work permit is issued for three years and three months. The three years cover the length of the program and the additional three months is to allow for a transition to apply for permanent residence. If there is a change in an employer a new work permit must be obtained. Quebec also extended their CAQs to 36 months from the previous 14 months on October 16, 2006. This policy change was designed to "significantly decrease the number of work permit renewals processed and reduce costs to live-in caregivers." The CIC *Operational Bulletin 025-January 3, 2007* which outlines this policy change also stipulates that Visa Officers are "free to depart from the general policy where circumstances warrant (e.g., passport validity, live-in caregivers destined for Quebec)."

The requirement for a new validation is to prevent or deter abuse by those who might use fictitious employers to bring a "stable" of live-in caregivers to Canada. This requirement is to help prevent abuse of the program and to help reduce the vulnerability of live-in caregivers to exploitation. Once in Canada and if there is a change in employer or need for a renewal of a work permit this new authorization can be issued by Vegreville CIC. [OP 14 para. 7.1]

There are reports that some unscrupulous agencies that recruit live-in caregivers to Canada charge exorbitant fees for making live-in placements and that some utilize fictitious employers to get the applicant into Canada. This leaves the live-in caregiver without employment and they have to scramble to get a new job validation and work permit in order to meet the two-year employment requirement within three years of coming to

Canada. No doubt most live-in caregiver placement agencies are reputable but one should be on the lookout for agencies that try to abuse the system and take advantage of individuals who want to come to Canada under the Live-in Caregiver Program.

The CIC Manual IP 4 states that, "A bridge extension may be obtained as an interim work permit to live-in caregivers who are between jobs and have not yet found a new employer. These extensions are usually for a period of two months." [IP 4 para. 8.5]

The live-in caregiver work permit also should include the following statement: "May study without study permit if course or program of studies is six months or less" [R 188]. If the course or program is longer than six months, a study permit must be obtained. [IP 4 para. 8.7]

The procedure for Inland Processing of Live-In Caregivers and the issuing of new work permits is set out in CIC Manual IP 4 "Processing Live-In Caregivers in Canada."

## Family Members

Family members are not allowed to accompany the live-in caregiver at the time of the issuance of the Work Visa as part of that application. Even if an employer agrees that a family member may reside with the caregiver in the employer's residence, there are no guarantees that a subsequent employer would agree to the same terms. "Live-in caregivers who wish to bring their children should be given the reasons why this is not possible. Visas should not be issued to the family members, although the live-in caregiver applicant may be approved." [OP 14 para. 5.10]

This policy does not prevent family members from coming to Canada under another visa, for example a student or visitor visa or one of the visas issued under the International Youth Exchange Programs if they are eligible. [OP 14 para. 6.2] For further information on these programs see FW 1 "Foreign Workers Manual."

Live-in caregivers "must list all family members in Canada and abroad and indicate which ones they wish to have processed concurrently for permanent residence." Non-listed family members cannot be added to the permanent resident application once it has been filed. [IP 4 para. 9.2]

All family members of live-in caregivers who apply for permanent residence must be examined before the issuance of the per-

manent resident visa. The exceptions to this requirement are separated, or former spouses/common-in-law partners, and children in the sole custody of another person. Eligible family members must undergo medical, criminal and security checks. [IP 4 para. 9.10] Applicants are advised not to complete medical exams until instructions are sent by the Visa Office. [IP 4 para. 5.6] "Applying for Permanent Residence from Within Canada: Live-in Caregiver" [IMM 5290E] (08-2007)

Live-in caregivers cannot be approved if any of their eligible family members are inadmissible. Ineligible family members are not members of the Family Class and cannot subsequently be sponsored. Ineligible family members will include those individuals who are defined as not family members under the Act. For example, because they are not full time students and over the age of 21 or that they are family members who are not subject to examination. This group would include a separated spouse or former common-in-law partners that cannot be later sponsored into Canada. [IP 4 para. 9.14] To quote the Manual OP 14, "A sponsor's spouse, former common-in-law or child in the custody of another person who is not examined cannot later be sponsored as a member of the Family Class since they are excluded from the Family Class per regulation 117(9)(d)." [OP 14 para. 9.8]

If a family member is originally listed as non-accompanying they may become an accompanying family member only if the principal applicant's request has been made before the permanent residence has been granted. [Operation Bulletin 025-January 3, 2007 para. 2] Medicals need to have been completed prior to the issuance of the permanent resident visa or they would be excluded from the family class under IRPA Regulation 117(9)(d).

All live-in caregivers' children must undergo a medical examination before the issuance of the permanent resident visa. There is an exemption for children in the legal custody or guardianship of another individual. The applicant must provide written evidence confirming that legal custody of the child is with another individual. The live-in caregiver applicant will be refused "if any family member is inadmissible or if any family member cannot be located or is uncooperative in undergoing medical or background checks. The refusal letter to the applicant must state that the applicant **and** all family members are refused." [IP4 para 9.17]

If the reason for the refusal is that of a spouse, common-law partner and/or children were not medically examined, visa officers are directed to "confirm that they were indeed subject to

examination, and not exempt because of a relationship breakdown." [IP4 para 9.17]

Family members of live-in caregivers who have been examined can apply after the principal applicant has been accepted for status as a permanent residence of Canada. Live-in caregivers are considered a separate class and can apply for permanent residence after they have worked for two years in the Live-In Caregiver Program within three years of their arrival in Canada.

Live-in caregivers who are accepted for permanent residence have a choice of requesting parallel processing for some or all of their family members residing in or outside of Canada. Those who are processed concurrently at the visa office may be issued permanent resident visas at the same time as the live-in caregiver is approved.

## Regulations

Live-in caregivers must meet the requirements for landing as set out in IRPA Regulation 113.

113. (1) A foreign national becomes a member of the live-in caregiver class if

- (a) they have submitted an application to remain in Canada as a permanent resident;
- (b) they are a temporary resident;
- (c) they hold a work permit as a live-in caregiver;
- (d) they entered Canada as a live-in caregiver and, for a cumulative period of at least two years within the three years immediately following their entry,
  - (i) resided in a private household in Canada, and
  - (ii) provided child care, senior home support care or care of a disabled person in that household without supervision;
- (e) they are not, and none of their family members are, the subject of an enforceable removal order or an admissibility hearing under the Act or an appeal or application for judicial review arising from such a hearing;
- (f) they did not enter Canada as a live-in caregiver as a result of a misrepresentation concerning their education, training or experience; and
- (g) where they intend to reside in the Province of Quebec, the competent authority of that Province is of the opinion that they meet the selection criteria of the Province.

### Calculation

(2) The cumulative period referred to in paragraph (1)(d) may be in respect of more than one employer or household and need not be without interruption, but may not be in respect of more than one employer or household at a time.

SOR/2004-167, s. 80(F).

Live-in caregivers are authorized to apply for permanent residence in Canada under *IRPA Regulation 72*. It states as follows:

#### Becoming a permanent resident

72. (1) A foreign national in Canada becomes a permanent resident if, following an examination, it is established that

(a) they have applied to remain in Canada as a permanent resident as a member of a class referred to in subsection (2);

(b) they are in Canada to establish permanent residence;

(c) they are a member of that class;

(d) they meet the selection criteria and other requirements applicable to that class;

(e) except in the case of a foreign national who has submitted a document accepted under subsection 178(2) or of a member of the protected temporary residents class,

(i) they and their family members, whether accompanying or not, are not inadmissible,

(ii) they hold a document described in any of paragraphs 50(1)(a) to (h), and

(iii) they hold a medical certificate, based on the most recent medical examination to which they were required to submit under these Regulations within the previous 12 months, that indicates that their health condition is not likely to be a danger to public health or public safety and, unless subsection 38(2) of the Act applies, is not reasonably expected to cause excessive demand; and

(f) in the case of a member of the protected temporary residents class, they are not inadmissible.

#### Classes

(2) The classes are

(a) the live-in caregiver class;

(b) the spouse or common-law partner in Canada class; and

(c) the protected temporary residents class.

#### Criteria in the Province of Quebec

(3) For the purposes of paragraph (1)(d), the selection criterion applicable to a foreign national who intends to reside in the Province of Quebec as a permanent resident, and who is not a member of the family class or a person whom the Board has determined to be a Convention refugee, is met by evidence that the competent authority of that Province is of the opinion that the foreign national meets the selection criteria of the Province.

#### Accompanying family members

(4) A foreign national who is an accompanying family member of a foreign national who becomes a permanent resident under this section shall be issued a permanent resident visa or become a permanent resident, as the case may be, if following an examination it is established that

(a) the accompanying family member is not inadmissible;

(b) in the case of a family member who intends to reside in the Province of Quebec and is not a member of the family class or a person whom the Board has determined to be a Convention refugee, the competent authority of that Province is of the opinion that the family member meets the selection criteria of the Province.

SOR/2004-167, s. 26.

### Qualifying for the Two Year Employment Period

Absences from Canada, periods of unemployment, part-time work, sickness or maternity leave do not count toward the two-year work requirement. Vacation leave as outlined by the provincial or territorial employment standards legislation does count toward the two-year employment period. Time off on workers' compensation also does not count toward fulfilling the two-year employment requirement. As noted in *CIC Manual IP 4*, "Applicants who take live-out employment are automatically disqualified from the program, as are those who work for more than one employer at a time." [*IP 4 para. 5.3*] As the Manual states, "The live-in requirement is an important element of the program, as there is no shortage of Canadians willing to work on a live-out basis." [*IP 4 para. 5.6*]

The two years' work requirement within the three years immediately after the issuance of the initial live-in caregiver work permit must be met. Some live-in caregivers have difficulty meeting this two years of work within the three-year window. This problem is more severe in those live-in caregivers who care for elderly patients as their charges may die during the period of employment or those who have to change their jobs frequently and have to get a new work permit. See, "*Live-in Caregivers: When the Clock Runs Out...*," By Brenda Wong, *ImmQuest* Vol. 3, Issue 2, February 2007, pp. 1-3, for a more detailed discussion of this issue.

For new Work Permit applications under the Live-in Caregiver Program the standard Work Permit CIC form, "*Application To Change Conditions or Extend My Stay In Canada*" [IMM 1249E] is used. Citizenship and Immigration Canada has prepared a *Guide for Live-In Caregivers* [IMM 5290]. There is a specific *Document Checklist* for applications under the Live-in Caregiver Program [IMM 5282] that must be used. The standard *In-Canada Application for Permanent Residence Status* [IMM 5002] and *In-Canada Application for Permanent Resident Status Schedule 1 Background/Declaration* [IMM 5002 Schedule 1] are also used for In-Canada Applications under the Live-in Caregiver Program. If there is a lawyer or representative acting on behalf of the applicant the CIC form *Use of Representative* [IMM 5476] is required.

There is a reference in *CIC Manual IP 4* to an "*In-Canada Application for Permanent Residence Status for Live-in Caregivers*" (forms IMM 5002E and IMM 5282E). [See IP 4 para. 9.2] However, there appears to be an error of some kind as these forms are not presently available on the CIC website. The official CIC website link for *In-Canada Application for Permanent Residence (Live-in Caregivers)* refers the applicant to IMM 5002 and IMM 5002 Schedule 1 and the special *Live-in Caregiver Checklist IMM 5282* for all applications for permanent residence under the Live-in Caregiver Program. This page on the CIC website was last modified 2007-06-22. This information is current as of January 8, 2008.

There are a number of other valuable CIC information guides found on the CIC website. These include: "*Frequently asked questions: Working temporarily in Canada Live-In Caregiver Program*"; "*Information for Canadian employers: How to Hire*"; "*The Live-In Caregiver Program: Extending your stay*"; "*The Live-In Caregiver*

*Program: How to apply*"; "*The Live-In Caregiver Program: Who can apply?*"; "*Studying in Canada*"; and, "*Working Temporarily in Canada: The Live-In Caregiver Program.*"

To quote Inland Processing Manual IP 4 "*Processing Live-in Caregivers in Canada*"; "The decisions on a live-in caregiver's application for permanent residence are objective and straight forward. The Regulations do not allow for discretion." [IP 4 para. 5.10] It is also important to note that "a live-in caregiver is not eligible for permanent residence if their spouse or common-law partner is a refugee claimant, or has appealed or sought judicial review." [IP 4 para. 9.4]

Once a live-in caregiver is "Approved in Principle" they can apply for an open work permit. It reportedly takes 5-6 months to process an In-Canada Live-in Caregiver Application. If Quebec refuses the application of the live-in caregiver, the applicant is to be informed by CIC that they can apply for permanent residence in another province. The Case Processing Centre (CPC) will continue processing the application once the applicant has selected another province. Once they are granted the status of permanent residence in Canada under the *Charter of Rights and Freedoms* their mobility rights are guaranteed and they can move to any part of Canada that they chose.

This article is just a quick overview of the Live-In Caregiver Program. It is a program which does allow a foreign worker the opportunity to fill an area with a worker shortage and a critical need in the Canadian job market. It also provides an opportunity and way for individuals who have six months' training or at least one year's experience including six months in one job as a live-in caregiver to apply to work in Canada provided that they meet the other requirements of the program. After they have successfully completed the two years of required work within three years of issuing the work permit then they can apply for permanent residence in Canada.

This program has certainly addressed a critical need in Canada for people who require assistance of a live-in caregiver which the Canadian job market cannot fill. The program also provides an opportunity for individuals who may not qualify under other criteria to come to Canada to work and eventually obtain permanent resident status in Canada provided they meet the requirements as set out in the *Immigration and Refugee Protection Act* and the *Regulations*.



This summary is primarily based on CIC Manual *OP 14 "Processing Applicants for the Live-In Caregiver Program"* (03-2003) for overseas processing of live-in caregivers as foreign workers. It is also based on CIC Manual *IP 4 "Processing Live-in Caregivers in Canada"* (2007-11-30) for inland processing of live-in caregivers and other material referred to in the article. All material is current as of January 8, 2008.

*Edward C. Corrigan is a lawyer certified as a Specialist in Citizenship and Immigration Law and Immigration and Refugee Protection by the Law Society of Upper Canada in London, Ontario, Canada. He can be reached at corriganlaw@corrigan.ca or at (519) 439-4015.*

## Live-In Caregivers: Before the Courts

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workers subject to certain terms and conditions; and

- The FDMP is to be administered in a flexible manner with the emphasis on advice and counseling services available in order that applicants may upgrade their skills, where necessary, to qualify for the program.

Over the years, Citizenship and Immigration Canada ("CIC") has often failed to administer the program in the flexible manner envisioned by Justice Rouleau. As a result, caregivers have been forced to bear the significant expense of turning to the Federal Court of Canada to seek redress when their applications for new work permits or permanent residence have been rejected.

The following cases attempt to illustrate occasions when the Federal Court has recognized that greater flexibility and attention is required by CIC when processing LIC related applications, as well as when the Court has affirmed reasonable limits of the program.

### Clearer instructions to LICs and more flexibility required

In *Lim v. Canada (Minister of Citizenship and Immigration Canada)*<sup>2</sup>, the Applicant was seeking judicial review of a denial of

her new work permit application. The application had been made to the Case Processing Centre in Vegreville, Alberta following a change of employers under the LICP (she had been laid off by her first employer under the program). As a result of a misunderstanding with her new employer, her application for a work permit was inadvertently made 71 days after her status in Canada had expired. CIC's position was that "she only applied on day 71 of the 90-day grace period and thus can only blame herself than an officer did not look at the form before the 90 days elapsed". Furthermore, she did not check the appropriate box on her application to request restoration of her status, nor did she submit the corresponding \$200.00 fee. At no time was the Applicant advised of the deficiency of her application nor was she asked for the processing fee for the restoration of her status.

Justice von Finckenstein determined that CIC's decision was not reasonable after taking a close examination of the LCP, the relevant legislation, policy manuals and case law (including *Karim, supra*), as well the CIC booklet entitled "Applying to Change Conditions or Extend Your Stay in Canada – Worker" ("Extension Booklet"). In addition to providing a detailed overview of the LCP, Justice von Finckenstein made the following interesting observations:

- The Extension Booklet is difficult to read, it is confusing and it makes too fine a distinction between terms that an English speaking Canadian would not understand, let alone a foreign caregiver not fully conversant in either official language. . . fairness may, perhaps require no more than the accurate presentation of information. But it surely demands that much. . .
- It is necessary to be mindful that the actions of CIC have a drastic effect. The Applicant has to return to the Philippines and she has to reapply, which will take a minimum of two years given the backlog in Manila. She has to re-qualify from scratch. The time she has worked so far in Canada does not count toward the two years working time she needs before applying for permanent residence;
- It is clear that the purpose of the Program is to facilitate the attainment of permanent residence status. It is therefore incumbent on the Department to adopt a flexible and constructive approach to its dealings with the program's participants. The Department's role is not to deny permanent residence on merely technical grounds, but rather to work with, and assist participants in reaching their goal of permanent residence.

<sup>2</sup> 2005 FC 657.