

Chapter One

Financial Refusals and Requirements for the Sponsor

Introduction

A Canadian citizen or permanent resident may sponsor a foreign national who is a member of the family class [IRPA, s. 13(1)].

General

An undertaking is binding on the sponsor [IRPA, s. 13(3)].

The Act authorizes regulations on "sponsorships, undertakings, and penalties for failure to comply with undertakings" [IRPA, s. 14(2)(e)].

An officer is to apply the regulations on sponsorship in accordance with any instructions made by the Minister [IRPA, s. 13(4)].

Appeal Rights

Sponsors who have filed an application to sponsor in the prescribed manner have a right to appeal a decision not to issue a member of the family class a permanent resident visa [IRPA, s. 63(1)].¹ A sponsorship application that is not in accordance with section 10(1) of the *Immigration and Refugee Protection Regulations* [IRP Regulations] is not "filed in the prescribed manner" [IRP Regulations, s. 10(6)].

Discretionary Jurisdiction

The IAD cannot consider humanitarian and compassionate considerations on an appeal unless the sponsor is "a sponsor within the meaning of the regulations" [IRPA, s. 65]. "A sponsor within the meaning of the regulations" means as described in section 130 of the IRP Regulations.

¹ *Khera, Ramandeep Kaur v. M.C.I.* (IAD VA6-01433), Workun, May 9, 2007 (wife of deceased sponsor could not continue appeal in his place).

It is assumed that a sponsor is “a sponsor within the meaning of the regulations” unless a decision not to issue a permanent resident visa is made on this basis or the issue is raised on the evidence adduced by the parties at the hearing.²

Applications

An application by a foreign national as a member of the family class must be preceded or accompanied by a sponsorship application [IRP Regulations, s. 10(4)].

A sponsor cannot file more than one sponsorship application in respect of the same member of the family class if a final decision has not been made on the other application [IRP Regulations, s. 10(5)].

The application must:

- (a) be made in writing using the form provided by the Department, if any;
- (b) be signed by the applicant;
- (c) include all information and documents required by the Regulations, as well as any other evidence required by the Act;
- (d) be accompanied by evidence of payment of the applicable fee, if any, set out in the Regulations;
- (e) if applicable, identify who is the principal applicant and who is the accompanying spouse or common-law partner [IRP Regulations, s. 10(1)].

A sponsorship application not made in accordance with section 10(1) of the IRP Regulations is considered not filed in the prescribed manner for purposes of an appeal to the IAD under section 63(1) of *IRPA* [IRP Regulations, s. 10(6)].

If the requirements of sections 10 and 11 of the IRP Regulations are not met, the application and all documents submitted in support shall be returned to the applicant [IRP Regulations, s. 12].

According to a CIC Instruction on "Minimal Necessary Requirements for a Submission to be Considered an Application" (RIM-02-032 dated June 27, 2002), very limited information is required for a submission to be considered an application satisfactory for section 10(1) of the IRP Regulations. Furthermore, the decision is to be taken up front and before any processing has begun. Once an application has been accepted, it is not to be returned for re-submission; rather, any missing information is to be requested during case processing. It would appear unlikely that the Immigration Appeal Division (IAD) will have before it applications that have not been filed as prescribed for these would have been returned by CIC for re-submission per section 12. As a result, the IAD will not be faced with the issue of whether to dismiss an appeal for lack of

² *Nandra, Rajwinder Kaur v. M.C.I.* (IAD VA3-00771), Borst, May 28, 2004.

jurisdiction if the application was not filed as prescribed or to allow the sponsor to correct a minor deficiency in the application.

A decision shall not be made on an application for a permanent resident visa by a member of the family class if the sponsor withdraws their sponsorship application [IRP Regulations, s. 119].

Sponsor

A sponsor must be a Canadian citizen or permanent resident who is at least 18 years of age; resides in Canada; and has filed a sponsorship application in accordance with section 10 of the IRP Regulations [IRP Regulations, s. 130(1)]. An exception is provided where the sponsor is a Canadian citizen and does not reside in Canada: they may sponsor their spouse, common-law partner, conjugal partner or dependent child who has no dependent children if the sponsor will reside in Canada when the applicant becomes a permanent resident [IRP Regulations, s. 130(2)].

A sponsor must satisfy section 130 of the IRP Regulations from the time of initiation of the sponsorship application until a decision is made on the application otherwise they will not be considered a sponsor.³

“Resides in Canada” for section 130(1)(b) of the Regulations can be established by evidence of presence on Canadian soil and involvement in day-to-day activities not requiring absence abroad.⁴ Physical absence from Canada may not constitute an interruption of residence in Canada.⁵ The question is whether a sponsor has centralized their mode of living in Canada.⁶

Humanitarian and compassionate consideration is not possible where the sponsor is less than 18 years of age as they are not a sponsor within the meaning of the regulations.⁷

For a sponsor who is a Canadian citizen not residing in Canada, a mere expression of intent to return and reside in Canada is insufficient to satisfy section 130(2) of the IRP Regulations.⁸ A change in intent subsequent to the officer’s decision on the application is irrelevant.⁹

³ See section 133(1)(a) of the IRP Regulations.

⁴ *Cook, Donald Charles v. M.C.I.* (IAD MA5-01579), Hudon, August 10, 2006.

⁵ *Gritsan, Serguei v. M.C.I.* (IAD TA3-10556), D’Ignazio, October 5, 2004.

⁶ *Zhang, Tieshi v. M.C.I.* (IAD MA3-02491), Patry, September 20, 2004.

⁷ *Chan, May Yee v. M.C.I.* (IAD VA4-01434), Boscarriol, March 23, 2005.

⁸ *Law, Peter Koi v. M.C.I.* (IAD TA3-11031), D’Ignazio, May 19, 2004 (reasons signed June 2, 2004).

⁹ *Cook, Donald Charles v. M.C.I.* (IAD MA5-01579), Hudon, August 10, 2006. Compare *Bobocel, Norman Dean v. M.C.I.* (IAD WA5-00008), Munro, October 21, 2005 (reasons signed November 30, 2005) where a sponsor who misapprehended the legitimacy of his sponsorship was held to satisfy section 130(2).

Undertaking

The undertaking is given to the Minister or the competent authority of the province if the province has entered into an agreement referred to in section 8(1) of the *IRPA* [IRP Regulations, s. 131].

The undertaking obliges the sponsor to reimburse Canada or a province for every benefit provided as social assistance to the sponsored foreign national and their family members during the period beginning on the day the foreign national becomes a permanent resident. The undertaking ends in 10 years subject to exceptions: for a spouse, common-law or conjugal partner, three years; for a dependent child¹⁰ less than 22 when they become a permanent resident, 10 years later or when they reach 25, whichever is earlier; and for a dependent child 22 or older when they become a permanent resident, three years [IRP Regulations, s. 132(1)]. There are separate rules for undertakings to a province [IRP Regulations, s. 132(2), (3)].

A permanent resident visa shall not be issued to an applicant unless the sponsorship undertaking in respect of the applicant is in effect (i.e. has not been withdrawn) [IRP Regulations, s. 120(a)].

Agreement

The sponsor, co-signer if any and member of the family class who is at least 22 or if less than 22 is the sponsor's spouse, common-law or conjugal partner must enter into a written agreement that includes: a statement to provide for the basic requirements of the member of the family class and their accompanying family members for the period of the undertaking; a declaration by the sponsor and co-signer that their financial obligations do not prevent them from honouring the agreement and undertaking; and a statement by the member of the family class that they will make every reasonable effort to provide for their and their accompanying family members' basic requirements [IRP Regulations, s. 132(4)].

Co-signers

The sponsor's spouse or common-law partner may co-sign the undertaking if they are a permanent resident or Canadian citizen at least 18 years of age and residing in Canada and they meet the requirements for sponsoring in section 133(1) of the IRP Regulations (excluding section 133(1)(a)). A co-signer is jointly and severally or solidarily liable for a breach of the undertaking [IRP Regulations, s. 132(5)]. A co-signer may continue an appeal following the death of the sponsor if the evidence indicates a joint sponsorship.¹¹

¹⁰ For a full description see section 132(1)(b)(ii) of the IRP Regulations.

¹¹ *Annor, Gladys v. M.C.I.* (IAD TA4-04677), Whist, September 28, 2005.

Requirements for the Sponsor

A sponsorship application shall only be approved by an officer if from the day the application was filed until a decision is made with respect to the application, the sponsor meets the requirements set out in section 133(1) of the IRP Regulations. These requirements are that the sponsor:

- (a) is a sponsor as described in section 130;
- (b) intends to fulfil the obligations in the undertaking;
- (c) is not subject to a removal order;
- (d) is not detained in a penitentiary, jail, reformatory or prison;
- (e) has not been convicted of an offence of a sexual nature against any person or an offence that results in bodily harm to a relative of the sponsor including a dependent child or other family member¹², a relative of the sponsor's spouse, common-law or conjugal partner (unless acquitted or pardoned or at least 5 years have elapsed since completion of the sentence¹³);¹⁴
- (f) has not been convicted outside Canada of an equivalent offence to (e) (unless acquitted or 5 years have elapsed since sentence and rehabilitation is shown)¹⁵;
- (g) is not in default of any undertaking or any support payment obligations ordered by a court;
- (h) is not in default of repayment of a debt referred to in section 145(1) of the IRPA;
- (i) is not an undischarged bankrupt;
- (j) the sponsor's total income is at least equal to the minimum necessary income but this requirement does not apply if the sponsored person is the sponsor's spouse, common-law or conjugal partner with no dependent children; or with a dependent child who has no dependent children; or is a dependent child of the sponsor who has no dependent children or a person referred to in section 117(1)(e) or (g) of the IRP Regulations¹⁶;
- (k) the sponsor is not in receipt of social assistance other than for a disability¹⁷.

¹² “Family member” includes a person who was the sponsor’s wife at the time the offence was committed although they were divorced when the sponsor was convicted: *Joshi, Ajay v. M.C.I.* (IAD WA3-00046), Wiebe, December 19, 2003.

¹³ Section 133(2) of the IRP Regulations.

¹⁴ This provision is not to be taken lightly: *Gill, Amarjeet Singh v. M.C.I.* (IAD VA3-02834), Borst, August 10, 2004.

¹⁵ Section 133(3) of the IRP Regulations.

¹⁶ Section 133(4) of the IRP Regulations. See *Chekole, Awoke v. M.C.I.* (IAD WA2-00099), Wiebe, April 25, 2003 (reasons signed June 5, 2003) where the sponsor of a dependent child was not required to meet the MNI.

¹⁷ Section 133(1)(k) is not contrary to section 15 of the Charter: *Velasquez Guzman, Neila Rosa v. M.C.I.* (F.C., no. IMM-184-06), Noël, September 28, 2006; 2006 FC 1134 (appeal to FCA dismissed for mootness: *Velasquez Guzman, Neila Rosa v. M.C.I.* (F.C.A., no. A-467-06), Linden, Evans, Sharlow, November 5, 2007; 2007 FCA 358.

All the above requirements may be overcome by special relief¹⁸ except for (a), "is a sponsor as described in section 130" since section 65 of the *IRPA* precludes an appeal on humanitarian and compassionate considerations if the sponsor is not a sponsor within the meaning of the regulations.

An officer can approve a sponsorship application only if the sponsor satisfies the requirements continuously from the day the application was filed until the officer makes a decision on the application.

If the officer made no error in concluding that a requirement of section 133(1) of the IRP Regulations was not met at any time between the filing of the application and the making of the decision on the application, the IAD must uphold the officer's decision in law, even if the facts at the time of the hearing are such that the particular requirement is now met.¹⁹

There is a specified time frame for the minimum necessary income requirement whereby the income is calculated on the taxation year preceding the date of filing of the sponsorship application [IRP Regulations, s. 134(1)]. The IAD will make its determination using the same time period. Therefore if a sponsor meets the minimum necessary income at the time of the hearing before the IAD, that fact will be relevant to the discretionary jurisdiction of the IAD only. In these circumstances, a lower threshold for granting special relief will be appropriate given that the obstacle to admissibility has been overcome.²⁰

The sponsor has to meet the requirements of section 133 of the IRP Regulations (section 137 if in Quebec) up until the time the family members become permanent residents [IRP Regulations, s. 120(b)]. If a sponsor dies before that time the IAD may not consider humanitarian and compassionate considerations for the applicants.²¹

A sponsor who was adopted and whose adoption has been revoked may sponsor an application by a member of the family class provided the revocation was not obtained for the purpose of sponsoring the application [IRP Regulations, s. 133(5)].

Income Calculation Rules/Minimum Necessary Income

The sponsor's income is to be calculated on the last notice of assessment or equivalent document issued by the Minister of National Revenue in respect of the most recent taxation year preceding the date of filing of the sponsorship application [IRP Regulations, s. 134(1)(a)]. The income calculation may be made solely from these source documents. If a sponsor proposes a

¹⁸ *Effat, Mansoor v. M.C.I.* (IAD TA2-20734), Hoare, June 24, 2004.

¹⁹ *Ganidagli, Mustafa Serhat v. M.C.I.* (IAD TA3-11913), Whist, February 16, 2004.

²⁰ *Jugpall, Sukhjeewan Singh v. M.C.I.* (IAD T98-00716), Aterman, Goodman, Townshend, April 12, 1999.

²¹ *Rahman, Mohammed Ataur v. M.C.I.* (IAD TA4-12830), Whist, May 24, 2006.

different methodology and reliance on other source documents, the sponsor carries the burden of establishing the reliability of that evidence and how it applies to the calculation.²²

The income is income earned as reported in that document less any provincial allowance for instruction or training; any social assistance²³ or financial assistance under a resettlement program; employment insurance, other than special benefits; *Old Age Security Act* income; and any child tax benefit [IRP Regulations, s. 134(1)(c)]. If there is a co-signer, their income as calculated in the same manner is included in the sponsor's income [IRP Regulations, s. 134(1)(d)].

If the sponsor does not produce a notice of assessment or equivalent document or if their income is less than the minimum necessary income, the sponsor's Canadian income for the 12 month period preceding the filing of the sponsorship application is the income earned by the sponsor not including the amounts mentioned in the preceding paragraph.

In the case of business income, the relevant amount is net income (gross income less deductions).²⁴ Net income is to be calculated under section 134(1)(c) without deducting depreciation and amortization (which may have been deducted for tax purposes).²⁵

If an officer receives information that a sponsor is no longer able to fulfil the undertaking, the Canadian income of the sponsor is calculated on the basis of the 12 month period preceding the day the officer receives the information rather than the 12 month period preceding the date of filing of the undertaking [IRP Regulations, s. 134(2)].

"Minimum necessary income" is defined in section 2 of the IRP Regulations. It is the low income cut-off figure published by Statistics Canada for urban areas of 500,000 or more. The number of persons includes the sponsor and their family members²⁶; the sponsored foreign national, their family members whether accompanying or not; and every other person and their family members in respect of whom the sponsor has given or co-signed an undertaking still in effect and in respect of whom the sponsor's spouse or common-law partner has given or co-signed an undertaking still in effect, if the sponsor's spouse or common-law partner has co-signed with the sponsor the undertaking in respect of the foreign national.

Default in Undertaking

²² *Singh Chahal, Balwinder v. M.C.I.* (F.C., no. IMM-1423-07), Barnes, September 24, 2007; 2007 FC 953.

²³ As defined in section 2 of the IRP Regulations.

²⁴ *Warraich, Harpreet Kaur v. M.C.I.* (IAD TA6-12398), Ahlfeld, October 12, 2007.

²⁵ *Braafhart, Gerrit v. M.C.I.* (IAD TA4-04251), Waters, January 31, 2005.

²⁶ As defined in section 1(3) of the IRP Regulations. "Family member" includes a separated spouse and the spouse's dependent children: *Boyd, Isabella Seabra v. M.C.I.* (IAD VA6-01833), Miller, October 30, 2007.

Default begins when the government makes a payment that the sponsor promised to repay in the undertaking or an obligation in the undertaking is breached and it ends when the sponsor reimburses the government in full or in accordance with an agreement with the government²⁷ or ceases to be in breach of the obligation [IRP Regulations, s. 135]. A sponsor's conduct in regard to the outstanding debt is relevant to the exercise of discretionary relief.²⁸

Suspension of Processing of Sponsorship Application

If certain proceedings are brought against a sponsor or co-signer, the sponsorship application shall not be processed until final determination of the proceedings [IRP Regulations, s. 136].²⁹ In a proceeding initiated by a report under section 44(1) of the *IRPA*, there is a final determination when the IAD stays the removal order.³⁰

Province of Quebec

A different scheme applies in the Province of Quebec [IRP Regulations, s. 137]. Under the agreement with the Province of Quebec, the initial selection falls under the responsibility of the Quebec authorities and consequently the financial evaluation is made by them. This division of responsibilities does not preclude CIC from refusing a foreign national under section 39 of the Act. An appeal of the Quebec refusal is possible before the TAQ (Tribunal administratif du Québec). An appeal before the IAD based on the Quebec refusal is limited to humanitarian and compassionate considerations.

Inadmissibility for Financial Reasons

A foreign national is inadmissible for financial reasons if they are or will be unable or unwilling to support themselves or any other person who is dependent on them, and they have not satisfied an officer that adequate arrangements for care and support other than those that involve social assistance have been made [*IRPA*, s. 39]. Section 39 of the *IRPA* may be used where the sponsor is on social assistance for a disability and is therefore not caught by section 133(1)(k) of the IRP Regulations.³¹ The low-income cutoff figures can be used as a guide to determine if adequate arrangements have been made.³²

²⁷ This provision is more favourable to a sponsor than the former comparable provision: *Aryan, Miajan v. M.C.I.* (FC, no. IMM-6676-02), Lemieux, February 20, 2004; 2004 FC 254.

²⁸ *Brar, Charanjit Kaur v. M.C.I.* (IAD VA5-00400), Workun, March 30, 2006.

²⁹ Section 136 of the IRP Regulations. Proceedings are revocation of citizenship; report under s. 44(1) of the *IRPA*; charges re an offence punishable by at least 10 years imprisonment.

³⁰ *Dhillon, Rajbir Singh v. M.C.I.* (IAD TA3-19586), Hoare, April 11, 2006.

³¹ *Amir, Shafqat v. M.C.I.* (IAD MA6-08358), Gaetani, September 27, 2007.

³² *Debara, Sara v. M.C.I.* (IAD TA2-27021), D'Ignazio, November 13, 2003.

Transitional Issues

The transitional provisions of the IRP Regulations provide at section 351(1) that an undertaking under the former Act is governed by *IRPA*. However, there is an exception made to allow for recovery of social assistance payments as a result of a breach of an undertaking given under the former legislation [IRP Regulations, s. 351(2)]. Also the duration of an undertaking given under the former Act is not affected [IRP Regulations, s. 351(3)]³³.

Under section 320(8) of the IRP Regulations, a person is inadmissible for financial reasons if they had been determined to be inadmissible under section 19(1)(b) of the former Act.

³³ *Sharma: M.C.I. v. Sharma, Ashok Kumar* (F.C., no. IMM-6517-03), von Finckenstein, August 18, 2004; 2004 FC 1144.

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