

Information Brief

Understanding the Reasons for and the Consequences of Lengthy Processing Times and Rejections of Genuine Couples Applying for Spousal Sponsorship

Attention: Members of the Standing Committee on Citizenship and Immigration

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Organization: Spousal Sponsorship Advocates (SSA)

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Introduction

The COVID-19 pandemic has laid bare many problems and inequalities in Canadian systems and society and the immigration system is no exception. Pandemic related delays in the Canadian immigration system have hit certain families particularly hard. We wish to draw the Committee's attention to the plight of couples and families in the spousal sponsorship process. Not only have they had their lengthy wait periods for permanent reunification further delayed, due to existing policies around visa application screening, spouses from visa-required countries find it nearly impossible to visit Canada. This brief will seek to provide the Committee with a detailed explanation of the situation as it is experienced by participants, to provide evidence as it relates to that experience and to provide recommendations for the analysis and amelioration of the process.

History and Current Situation

It is understandable that some level of process interruption was unavoidable due to the pandemic, however it is difficult for those involved to understand why it has taken the government so long to prioritize family reunification. For seven months, many couples and families in the spousal and partner sponsorship process have experienced not only heartache at the virtual impossibility of being able to visit one another, but additionally they have had the length of their wait for permanent reunification significantly extended. Most have not seen their partners for many months and some have not seen their partners in years. Important steps have been taken to reunite *some* families, but the solution is not complete and unfortunately the pandemic-related issues are only the tip of the iceberg for the families in our group.

Due to the situation at hand, couples and families began sharing their stories. Normally we would be scattered across the country, unaware of the patterns that exist among us. Now we are joined in one community and those patterns have become very clear.

Many stories with reoccurring themes have emerged. Stories of couples enduring processing wait times well in excess of the 12-month average, stories of women suffering miscarriages, giving birth and raising children without access to their partners, stories of application refusals, appearances before the IRB tribunal, re-applications, costly legal bills and valuable years lost not to mention profound mental, emotional, physical and financial suffering.

Significant inequalities have been observed by the members of Spousal Sponsorship Advocates. Inequalities of processing times which can range from just a few months to multiple years, refusal rates and general treatment across different Visa Offices Abroad, across different types of couples, and even across different races and genders. There is a high incidence among sponsors and applicants reporting feeling that they have been stripped of their dignity while subject to this process.

The lengthiest part of the process occurs at the applicant review stage and with the assessment of the genuineness of the relationship. It is our understanding that the prevention of marriage fraud and detection of marriages of convenience relies heavily on the screening of applications based on certain criteria which have remained off public record for understandable reasons. We observe however that anyone having a relationship that is not considered to be very ordinary is flagged as suspicious.

Examples of such relationships include:

- Mixed religion couples

- Mixed race couples
- Couples with an age gap between them
- Couples where the woman is older than the man
- Couples who have been judged to be mis-matched in terms physical desirability
- Couples where the woman has a child from a previous relationship
- Couples where the applicant hails from a poor or socially unstable nation
- Couples who met on-line
- Couples who chose to have minimalist or non-traditional weddings
- Couples with mismatched social status or education levels
- Couples with applicants from countries that have a history of marriage fraud
- Couples who decided to marry after knowing one another for months rather than years
- Couples with a sponsor who made a significant life change just prior to the relationship, ex. Change of faith, finalization of divorce, etc.

In addition to significantly longer wait times for processing of applications, the couples represented in our group found it nearly impossible to obtain visitor's visas for outland spouses. The very fact that we are married or have children between us is the reason that our applications are rejected. We ask ourselves regularly, how can fear of foreign family members overstaying their welcome possibly outweigh the government's responsibility to family unity, especially in times of crisis? How can the birth of a child between man and wife not be considered a legitimate reason for partners to be granted a visit? If this does not strike you as absolutely deplorable and in need of urgent attention, then we beg you to please put yourself in the shoes of these people now. No family deserves this treatment, and existing policies and procedures implemented by the Canadian government are responsible for this egregious injustice.

Although the intent of protecting the integrity of the Canadian immigration system is noble, the collateral damage of existing screening measures is heartbreaking and atrocious and by all accounts is evidence of a serious blemish on Canada's human rights record.

In short, we find ourselves condemned by mere suspicion and the unusual circumstances of our life stories and in some cases simply because of age, race, religion, or ethnicity. We find ourselves severely disadvantaged by a system that has failed to recognize that we live in a modern world where social and cultural traditions are challenged to be more inclusive with every passing day. Traditions that devalue women and stereotype them based on their age, marital history or single-parent status, traditions that are rooted in racism, prejudice, greed and closed-mindedness do not deserve to be recognized as valid reasons for screening of applications for the reunification of international couples.

As soon as someone fails to fit the mold of a common relationship, they are subjected to intense scrutiny for which they must pay extra in terms of time and in terms of money. Examples of such costs and barriers to progress include:

- Higher up-front costs for preparation of applications.
- More lengthy preparation period.
- Significantly longer processing times.
- More travel expenses to visit foreign spouses.

- Difficulty obtaining leave from work to travel and associated risk to employment stability. This exacerbates the issue since it is essential for sponsors to maintain their income and employers may look unfavorably upon requests for leaves beyond paid vacation that they may or may not have access to.
- Higher rejection rate.
- Significant costs and time involved in challenging refusals before the IRB.

Evidence of the Issue

We believe that it is very clear to see that the measures employed to protect the Canadian public from marriage fraud and marriages of convenience and unauthorized migration do in fact cause at least as much harm as they do good. Personal testimonies have been gathered to showcase current examples of the lived experience of Canadians and foreign spouses who have paid for these measures with their mental, emotional and physical health as well as their family finances and ability to live their lives together as a complete family.

Hagirah Mirza wrote *"In Feb. 2014 we applied for my husband's sponsorship through an immigration consultant... In Feb 2015, we received an interview date for March... My husband was interviewed for about 2 hours, and then I was called. The immigration officer asked 2-3 questions about my daily activities in Canada and my education. She then immediately told me she was not convinced our marriage was genuine. The officer questioned how I, an educated foreigner from a good socio-economic status would settle to marry a lower status man from Pakistan. When she wasn't satisfied with my reply, she then said she had a hard time believing that an unmarried Muslim Pakistani man would marry a divorcee such as myself, without having an ulterior motive."*

Hagirah since gave birth to the couple's child in 2017 and has had to reapply for sponsorship. They were so close to finally being reunited when the pandemic hit. The couple applied for a TRV in September 2020 and were denied. *"We have been married 7 years and 5 months. We have been sponsoring for 6 and a half years. 2 applications, 2 lawyers, 2 consultants, a 3-year-old daughter, thousands of dollars in tickets and immigration and professional fees, and hundreds of pages of proof we are still nowhere."* Hagirah says.

Deanna McConnell, who married her Haitian husband in 2017 after they spent years in a serious relationship has likewise had to suffer through the spousal sponsorship process twice. When asked to describe his wife's occupation in the interview, McConnell's husband Jean gave an answer that the agent saw as incorrect. Deanna says *"I volunteer in some big positions in my community. That's how some things are in rural Ontario towns. During the interview Jean mentioned that I worked as police. At that time, I was an auxiliary officer. I was always proud to aid my community as an officer but now it was being held against me and my husband Jean because the interviewer didn't understand Jean's accurate explanation... In November 2018, (10 months after the denial), I learned that immigration appeal division will be sending me to a full hearing through the Toronto Courts. I learned that the wait time is approximately two years plus the application would have to be reprocessed. Reprocessing would be another 6-8 months. If I was to cancel and reapply, it would take approximately one year to complete the application."*

Given that information, Deanna and her husband decided to withdraw their appeal and instead reapply for sponsorship. Their second application has since been in process for 21 months and they are still waiting.

These are only two stories of many in which couples have been unfairly judged and their reunifications delayed for *years*. Complete personal testimonies are available to the members of the Committee upon request. When the pandemic added uncertainty and several months more on to those already outrageous wait times, the feeling was one of complete devastation. Even those who had just begun the process prior to the onset of the pandemic report feeling hopeless and discouraged, there are no answers and there is no clear timeline anymore and these people's days and nights are steeped in anxiety and pain.

A recent mental health survey of group members found that:

- 18%** have suicidal thoughts
- 22%** had to stop working
- 70%** have anxiety and **44%** generalized anxiety
- 35%** started having panic attacks
- 78%** have periods of severe depression
- 76%** have severe energy loss
- 57%** now have physical pain
- 52%** gained or lost weight abnormally
- 85%** have sleep problems

Other informal surveys have been conducted which anecdotally support our observations. On September 21st 2020, a group survey regarding **TRV Applications** revealed the following:

- How many have had their TRV applications rejected: **226**
- How many haven't applied yet: **218**
- How many have TRV applications in process: **80**
- How many have had their TRV applications approved: **29**

Total number of respondents: **553**

In addition to mental health impacts, a survey of 330 families at different stages in the application process reported paying tens of thousands of dollars per family in costs including application fees, legal assistance, travel costs, communication costs and the cost of one family living in two homes. Detailed results of the Financial Impacts survey are also available upon request.

In September of 2020, a federal court challenge to an Immigration Appeals Division (IAD) decision regarding a couple in a conjugal relationship found that ***“The IAD focused unreasonably only on those factors which raised concerns, and failed to identify and assess positive factors offered in support of AP and AM’s relationship, most notably their personal behaviour. For example, while the IAD acknowledged both families know of their relationship and consider them a couple, it remained fixated on AM’s family not knowing the particulars of their sex life. This Court has found it unreasonable to engage only with evidence supporting the decision-maker’s preferred outcome, rather than***

considering all evidence and providing a rationale as to why certain evidence is preferred.” (A.P. v. Canada (Citizenship and Immigration), 2020)

The judge further found that ***“the IAD’s decision was based on a closed mind or bias resulting in an unreasonable assessment of the evidence”*** (A.P. v. Canada (Citizenship and Immigration), 2020). Although these findings relate to one case specifically, they resonate with many couples in our group who have felt that they were up against an impenetrable wall of bias that would not be overcome by any amount of evidence in support of the legitimacy of their relationship.

In a 2014 paper by Professor Victor Satzewich for which he conducted site visits at 11 Canadian overseas visa offices between July 2009 and January 2012 and kept records of his interviews in field notes, Professor Satzewich explores the ways in which determinations are made about what constitutes a “real” or “fake” marriage according to the Visa officers that process spousal sponsorship files. He writes that *“Margaret Walton-Roberts (2004) argues that, in India, relationships that do not develop or are not celebrated according to culturally defined customs constitute “easy” refusals by Canadian visa officers (for a similar argument in the British case, see also Wray 2006). Lending weight to Walton-Roberts’ (2004) argument, when asked whether deviations from culturally defined practices have been used too often to refuse applications in India in the past, a unit manager admitted “There is some truth in that” (Field Notes, January 11, 2012:45). Further, a DIO in south Asia explained that “culture has been used too much here as the basis for refusals, and we have been losing those cases on appeal” (Field Notes, January 10, 2012:13).”* (Satzewich, 2014)

Although these observations are somewhat dated, it appears that similar trends in refusals of genuine couples due to deviations from cultural norms are occurring even in current times. What we really want the government of Canada to do is to recognize just how serious the impact of an incorrect assessment of a couple’s genuineness is on the wellbeing of the individuals involved.

Recommendations

Systems that are designed to work in theory can have unintended consequences in practice. In such cases, it is necessary to review and revise. In 2012, then Minister of Citizenship and Immigration Jason Kenney announced new measures to protect Canadian citizens from being taken advantage of by disingenuous foreign spouses seeking an easy route to citizenship. Among those measures was the requirement for spouses to remain in their marriages for two years following the granting of PR or risk losing their status. That change has since been repealed by the Trudeau Liberals as it was deemed to have put too many people at risk of being forced to stay in unhappy or abusive relationships. As stated in the Policy Options Magazine article by Steven Meurrens about this subject in November 2017, ***“Such outcomes made it clear that the solution to marriage fraud should not be to impose hardship on all in order to catch a few.”*** (Meurrens, 2017)

Enough time has passed since the implementation of increased screening measures to demonstrate that they are flawed to the detriment of far too many families. People’s lives are being destroyed and we believe that this committee will seek to complete a thorough and effective review of the existing system, to evaluate the outcomes, to conduct interviews and query the records for evidence of harmful trends, systemic discrimination and bias and to take appropriate measures to reunify families urgently. Therefore, in addition to requesting information from the IRCC about backlogs and visa refusals over the

course of the pandemic, we recommend that the Committee query the records and employees of the IRCC for the following sets of information:

- The program demand in comparison with the planned immigration levels over the last 5 years.
- Trends in accumulation of backlog over the last 5 years. Is there a cycle of accumulation and purge?
- The relationship between large backlogs and longer wait times & higher numbers of refusals.
- The relationship between demand and processing levels & human resource allocations.
- The worst performing Visa Offices Abroad in terms of lengthy processing times.
- What can be done to reduce backlogs and lengthy processing times at those locations.
- The processing times and approval rates for all applications for comparison by the applicant's country of origin.
- The processing times and approval rates for couples that are flagged for increased scrutiny vs. processing times and approval rates for couples that are deemed to be low-risk.
- The quantity of files in process for greater than 12 months prior to the onset of the pandemic.
- The average duration of processing time for each stage of application processing.
- The average duration of processing at CVOAs for files which have been flagged for increased scrutiny in comparison to the average duration for low-risk couples at this stage.
- The average waiting time for interviews prior to the pandemic.
- The processing times and approval rates for partnerships involving a female sponsor and male applicant in comparison to the processing times and approval rates for partnerships involving a male sponsor and female applicant.
- The processing times and approval rates for couples in which the sponsor has a child from a previous relationship. Further analyzed by the gender of the sponsor.
- The processing times and approval rates for couples in which the applicant has a child from a previous relationship. Further analyzed by the gender of the applicant.
- The processing times and approval rates for racialized applicants vs. Caucasian applicants if known.
- The number of TRV applications received by foreign spouses of Canadian citizens and permanent residents and the percentage of which were denied.
- The number and percentage of TRV applications denied to foreign spouses attributable to paragraph 179(b) of the Immigration and Refugee Protection Regulations (IRPR)

It is further recommended that the Committee conduct interviews with the following sets of stakeholders:

- Couples who have had their applications rejected and who have successfully challenged those results with the IRB.
- Couples who have had their applications rejected and who have re-applied.
- Couples who have had their applications rejected, have failed to have their rejections overturned and who have remained married.
- Couples who have had children together and who continue to face long delays in the processing of their applications and rejections.
- Couples who report mistreatment and/or discrimination in the processing of their files and in interviews.

- Applicants who have reason to believe they have been refused due to socio-economic reasons, gender, age, race, national origin or religion.
- Processing agents involved in the evaluation of applicants and spousal and partner relationships.

Finally, it is recommended that the Committee have the following sets of information reviewed and critiqued by a panel of professionals who specialize in identifying issues of systemic discrimination and human rights violations as well as program integrity specialists:

- The screening measures by which the genuineness of relationship between sponsored and sponsored spouses are assessed.
- The relationship, sponsor and applicant traits and circumstances which are used to flag files for additional scrutiny.
- The instructions and training provided to sponsorship file processing agents
- The processing agents' notes on a selection of files.
- The grounds for refusal of spousal and partner sponsorship applications.
- The proceedings of refusals challenged at the IRB.
- The grounds for refusal of TRVs for spouses of Canadians and permanent residents.
- The instructions and training provided to the processing agents of TRV requests.

This type of review and action would be in keeping with the recommendations of the 2018 House of Commons Report by the Standing Committee on Canadian Heritage: TAKING ACTION AGAINST SYSTEMIC RACISM AND RELIGIOUS DISCRIMINATION INCLUDING ISLAMOPHOBIA. Particularly the section that deals with Government Policy Making which states:

Recommendation 13

Recommends the Government of Canada develops an anti-racism impact assessment framework to help anticipate and remove unconscious bias in proposed policies, programs, and decisions.

Recommendation 22

Recommends the Government of Canada take a strong leadership role to actively condemn systemic racism and religious discrimination including Islamophobia.

(Fry, 2018)

Applicable Human Rights Articles

Article 16.3 of the United Nations Universal Declaration of Human Rights states that “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” (UN, 1948)

“Under Article 5 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), States Parties undertake “to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... the right to marriage and choice of spouse”. (Nicholson, 2018)

“The 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) also requires States Parties to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations”, including as regards the right to enter into marriage, rights and responsibilities during marriage and at its dissolution, and in all matters relating to children.” (Nicholson, 2018)

Description of Submitting Organization

This briefing document has been submitted by the Spousal Sponsorship Advocates Facebook Group of Canada, also known as SSA. The SSA is a grassroots advocacy group that was formed in June 2020 as a means to organize action and raise awareness for the plight of spousal and family sponsors and applicants particularly in the face of additional delays due to the COVID-19 pandemic.

Works Cited

A.P. v. Canada (Citizenship and Immigration), IMM-4343-19 (Federal Court September 17, 2020).

Fry, H. (2018). *Taking Action Against Systemic Racism and Religious Discrimination Including Islamophobia*. Ottawa: Canadian House Of Commons.

Meurrens, S. (2017, November 9). *Policy Options*. Retrieved from <https://policyoptions.irpp.org/https://policyoptions.irpp.org/magazines/november-2017/addressing-concerns-about-marriage-fraud/>

Nicholson, F. (2018, January). *United Nations High Commissioner for Refugees*. Retrieved from <https://www.unhcr.org/https://www.unhcr.org/5a8c40ba1.pdf>

Satzewich, V. (2014). *Canadian Visa Officers and the Social Construction of "Real" Spousal Relationships*. Canadian Sociological Association.

UN. (1948, December 10). *United Nations*. Retrieved from www.un.org/https://www.un.org/en/universal-declaration-human-rights/