Federal Court  Cour fédérale

Date: 20150910

Docket: IMM-4248-14

Citation: 2015 FC 1064

Ottawa, Ontario, September 10, 2015

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

LEILANI TERANTE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

I. Introduction

[1] The applicant seeks judicial review, pursuant to paragraph 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act], of the decision by a Citizenship and Immigration Canada [CIC] immigration officer [the Officer] refusing her application for permanent residence as a member of the live-in caregiver class.

[2] The applicant is seeking an order quashing the Officer's decision and referring the matter back for redetermination by another CIC officer.

[3] For the reasons that follow, the application for judicial review is dismissed.

II. Background

[4] The applicant, Ms. Leilani Terante, is a citizen of the Philippines. She came to Canada in April 2007 to work as a live-in caregiver and applied for permanent residence as a member of the live-in caregiver class in May 2011. She included her two minor children, who continue to reside in the Philippines.

[5] On June 7, 2013, CIC informed the applicant that she had met all of the eligibility requirements to apply under the live-in caregiver class, but a final decision would not be made until all remaining requirements were satisfied. The letter also indicated that she would not be able to become a permanent resident until all of her family members passed medical and background checks.

[6] On June 15, 2013, the applicant married Mr. Sujeewa Sampath Madduma Hallina Liyanage, with whom she had been cohabiting since October 2011 and had a child with, born in March 2012. In April 2013, Mr. Liyanage applied for a Pre-Removal Risk Assessment [PRRA] after his refugee claim had been rejected in March 2012. Mr. Liyanage also had an ongoing criminal case in Canada. In early October 2013, the applicant added Mr. Liyanage to her application for permanent residence.

[7] On October 20, 2013, CIC contacted the applicant to inform her that the requirements set out in the *Immigration and Refugee Protection Regulations*, SOR 2002/227 [the Regulations] for permanent residence under the live-in caregiver class still did not appear to be satisfied. Specifically, the Officer indicated that Mr. Liyanage did not meet paragraph 113(1)(e) of the Regulations:

> Regulation 113(1)(e) states that a foreign national becomes a member of the live-in caregiver class if 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.
>
> Your spouse Sujeewa Madduma Hallina Liyanage is 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.

[8] The Officer provided the applicant with 60 days to submit a response.

[9] On November 5, 2013, the applicant and Mr. Liyanage met with a Canadian Border Services Agency Officer [the CBSA Officer]. The CBSA Officer informed them that Mr. Liyanage's PRRA had been refused. The applicant's evidence in this application is that, after some discussion, the CBSA Officer told them that he would stay Mr. Liyanage's removal from Canada until after the hearing of his criminal case (scheduled for January 10, 2014) and, "in light of [the applicant's] permanent residence application and the likelihood of a decision being rendered shortly thereafter," Mr. Liyanage's removal would also be stayed until a final decision was made on the application. She also contends that she discussed the CIC fairness letter with the CBSA Officer, who indicated that submitting the documents related to the criminal hearing to CIC would be a sufficient response.

[10] On November 29, 2013, the applicant requested a 90 day extension from CIC to respond the fairness letter and that request was granted. The applicant responded to the Officer on January 30, 2014. She submitted that the hearing for Mr. Liyanage's criminal matter was held on January 10, 2014 and he had received a conditional discharge, attaching the relevant court documents.

[11] At the request of the applicant on November 29, 2013 a 90-day extension was granted by CIC to respond to the fairness letter. On January 30, 2014 the applicant submitted the relevant court documents resulting from Mr. Liyanage's criminal matter held on January 10, 2014 for which he had received a conditional discharge.

III. Issues

[12] The following issues arise in this application:

1. Did the Officer err in refusing the application for permanent residence on the basis that the applicant's husband was subject to an enforceable removal order?
2. Did the Officer breach the duty of procedural fairness?

IV. Standard of Review

[13] The Officer's assessment of the applicant's eligibility for permanent residence as a member of the live-in caregiver class raises questions of mixed fact and law that fall within his or her expertise, so the applicable standard of review is reasonableness (*Abalos v Canada*

(Citizenship and Immigration), 2011 FC 608 at para 15, 390 FTR 150 [*Abalos*], *Maxim v Canada (Citizenship and Immigration)*, 2012 FC 1029 at para 19).

[14] It is well-established that issues of procedural fairness are to be reviewed on the correctness standard (*Mission Institute v Khela*, 2014 SCC 24, [2014] 1 SCR 502 at para 79, [2014] 1 SCR 502; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43, [2009] 1 SCR 339). However, some deference should be given to the Officer's procedural choices (*Forest Ethics Advocacy Association v National Energy Board*, 2014 FCA 245, 246 ACWS (3d) 191, *Re: Sound v Fitness Industry Council of Canada*, 2014 FCA 48 at paras 34-42, 455 NR 87, *Maritime Broadcasting System Ltd. v Canadian Media Guild*, 2014 FCA 59 at paras 50-56, 373 DLR (4th) 167).

V. Analysis

A. *Did the Officer err in refusing the application for permanent residence on the basis that the applicant's husband was subject to an enforceable removal order?*

[15] The live-in caregiver class is a class for foreign nationals who may become permanent residents upon meeting the requirements of Part 6, Division 3 of the Regulations (Regulations, s 110). The requirements for becoming a member of the class are set out in subsection 113(1) of the Regulations, including the requirement that neither the foreign national themselves, nor their family members, are the subject of an enforceable removal order (Regulations, s 113(1)(e)).

[16] Family members may be included in a caregiver's application and will become permanent residents if the caregiver becomes a permanent resident and if the family members

themselves are not inadmissible (Regulations, s 114 and 114.1). All of these requirements must be met when the application for a work permit or temporary resident visa is made, when the permit or visa is issued, and when the foreign national becomes a permanent resident (Regulations, s 115).

[17] A removal order is enforceable if it has come into force and has not been stayed (IRPA, s 48(1)) and removal orders are to be enforced as soon as possible (IRPA, s 48(2)). A removal order comes into force 15 days after one's refugee claim is refused by the Refugee Protection Division (IRPA, s 49(1)(b)).

[18] Section 50 of the Act provides that a removal order will be stayed in certain circumstances:

50. A removal order is stayed	50. Il y a sursis de la mesure de renvoi dans les cas suivants :
(a) if a decision that was made in a judicial proceeding — at which the Minister shall be given the opportunity to make submissions — would be directly contravened by the enforcement of the removal order;	a) une décision judiciaire a pour effet direct d'en empêcher l'exécution, le ministre ayant toutefois le droit de présenter ses observations à l'instance;
(b) in the case of a foreign national sentenced to a term of imprisonment in Canada, until the sentence is completed;	b) tant que n'est pas purgée la peine d'emprisonnement infligée au Canada à l'étranger;

(c) for the duration of a stay imposed by the Immigration Appeal Division or any other court of competent jurisdiction;	c) pour la durée prévue par la Section d'appel de l'immigration ou toute autre juridiction compétente;
(d) for the duration of a stay under paragraph 114(1)(b); and	d) pour la durée du sursis découlant du paragraphe 114(1);
(e) for the duration of a stay imposed by the Minister.	e) pour la durée prévue par le ministre.

[19] The Minister may also impose a stay of removal when the circumstances in a country or place pose a generalized risk to the entire civilian population (Regulations, s 230). Subject to some exceptions, a statutory stay of removal will apply when an applicant seeks judicial review of a decision of the Refugee Appeal Division that rejects, or confirms the rejection of, their claim for refugee protection (Regulations, s 231). The same is true while a PRRA application is being processed and thereafter if the PRRA is granted (Regulations, s 232) and in cases where the Minister is of the opinion that a stay is justified by humanitarian and compassionate or public policy considerations (Regulations, s 233).

[20] Unlike stays of removal, deferrals of removal are not defined by the Act or the Regulations and are granted by CBSA enforcement officers at their discretion.

[21] It is not disputed that Mr. Liyanage has been subject to a removal order following the refusal of his refugee claim. The parties do, however, differ on the question of whether that removal order remained enforceable at the time of the Officer's decision.

[22] The applicant submits that the Officer erred in concluding that the applicant was ineligible, since the removal order against Mr. Liyanage had been stayed by the CBSA Officer and was therefore not enforceable. In support of this argument, the applicant cites the following notes in the Field Operations Support System [FOSS]:

> NEGATIVE PRRA & NEGATIVE H&C DELIVERED WITH MOTIVES. PENDING CRIMINAL CHARGES (NEXT COURT DATE 10JAN2014). APPROVED STAGE 1 FOR SPONSORSHIP BY STAY OF REMOVAL.
>
> [Emphasis added.]

[23] It is the applicant's position that the CBSA Officer was likely granting a stay pursuant to section 233 of the Regulations in reliance on public policy considerations derived from the CIC IP-8 Spouse or Common-law Partner in Canada Class Operational Manual.

[24] The respondent in turn argues that the CBSA Officer only had jurisdiction to grant a deferral of removal which, unlike a stay, does not affect the enforceability of the removal order against Mr. Liyanage. The applicant submits that the respondent's argument is one of semantics since the effect of a stay and a deferral are the same, in that both render an enforceable removal order temporarily unenforceable.

[25] Both a stay of removal and a deferral of removal are temporary in nature, but the larger issue at hand is who has the jurisdiction to grant a stay of removal and whether both a stay and a deferral have the effect of rendering a removal order unenforceable. A stay of removal is granted by a legislative, regulatory or judicial authority, while a deferral of removal is solely within the purview of CBSA. A CBSA officer may assess whether a statutory stay applies so as to prevent

removal (*Garcia v Canada (Citizenship and Immigration)*, 2006 FC 311 at para 39 [*Garcia*]), but it does not appear that they have discretion to impose such stays.

[26] In *Wang v Canada (Citizenship and Immigration)*, 2001 FCT 148, [2001] 3 FC 682 [Wang], Justice Denis Pelletier held that the discretion to defer removal is founded in section 48 of the Act, noting that this discretion should only be exercised "in circumstances where the process to which deferral is accorded could result in the removal order becoming unenforceable or ineffective" (*Wang* at para 48). Justice Pelletier found that granting deferral solely for the purpose of delay is not consistent with the Act, as deferral "should be reserved for those applications or processes where the failure to defer will expose the applicant to the risk of death, extreme sanction or inhumane treatment in circumstances and where deferral might result in the order becoming inoperative" (*Wang* at para 48). A deferral is also appropriate when some collateral process might affect the enforceability of the removal order, such as where the other process might create a "situation in which the execution of the removal order was no longer mandatory" (*Wang* at para 33).

[27] This concept of limited discretion was echoed by Justice Danièle Tremblay-Lamer in *Garcia*, above, when she stated that "the discretion of the officer responsible for removal is clearly limited to when a removal order will be carried out" (*Garcia* at para 39).

[28] Further, the Federal Court of Appeal held in *Canada (Public Safety and Emergency Preparedness) v Shpati*, 2011 FCA 286 [*Shpati*] that the functions of CBSA removal officers are limited and deferrals are intended to be temporary. This finding was driven by "both the primary

statutory duty to remove, and the language chosen by Parliament to confine enforcement officers' discretion," referring to subsection 48(2) which, at the time of both *Wang* and *Shpati*, specified that removal be executed "as soon as reasonably practicable" (*Shpati* at para 45). This discretion is arguably even narrower now that the obligation placed on CBSA officers is to enforce removal orders "as soon as possible" (IRPA, s 48(2), see *Peter v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 1073).

[29] I agree with the respondent that Mr. Liyanage's circumstances do not give rise to a statutory stay pursuant to section 50 of the Act. There was no judicial decision that would have contravened if the removal order was enforced, he was not serving a sentence in Canada, and he does not benefit from a stay imposed by the Immigration Appeal Division, a judicial stay, or a stay under paragraph 114(1)(b) of the IRPA. He also does not appear to have the benefit of a stay pursuant to sections 230 to 234 of the Regulations.

[30] I further agree with the respondent that a deferral granted by a CBSA enforcement officer is not a stay imposed by the Minister for the purposes of subsection 50(e) of the Act. The Minister of Public Safety and Emergency Preparedness is the Minister for the purpose of section 50 of the Act (*Order Setting Out the Respective Responsibilities of the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness*, SI/2005-120). The Minister's power to impose a stay under subsection 50(e) has been delegated to the Director General of the Border Services Directorate, Operations Branch, except "in cases relating to interim measures requests and decisions made by International Human Rights Treaty Bodies." A

stay of removal under subsection 50(e) is a statutory power and there is no evidence to suggest that this authority has been delegated to CBSA removal officers.

[31] In my opinion, CBSA removal officers' discretion is limited to assessing the person's circumstances so as to determine the timing of removal, not to make legal determinations of the nature raised in statutory and judicial stays of removal. When they grant a deferral, they are not rendering the underlying removal order unenforceable; they are just suspending its application temporarily. This is a slight difference in the short-term, but it becomes more important when one considers that some of the statutory stays might result in very long stays of removal, such as the temporary suspension of removals to Haiti imposed by the Minister following the earthquake and which was in force for approximately 4 years. Therefore, it would appear that stays and deferrals are intended to address very different types of circumstances and to perform different functions in the immigration system.

[32] This differentiation seems to find support in the jurisprudence holding that removal officers do not have the jurisdiction to redetermine PRRAs or applications for permanent residence based on humanitarian and compassionate considerations made under paragraph 25(1) of the Act (e.g. *Charles v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 1096 at paras 28-29), their discretion to assess risk and personal circumstances being limited to deciding whether or not the obligation to remove can be carried out. Further, I note that the Act specifically indicates which body is responsible for each of the stays of removal outlined in the Act (the Minister, the Immigration Appeal Division, the courts, etc.). This, in my view, suggests that if Parliament had intended for removal officers to have the ability to impose stays for the

purpose of rendering removal orders unenforceable, it would have done so. No similar administrative decision-maker is accorded the authority to grant stays in the legislation. In my view, this, again, reflects the differing purposes of stays and removals.

[33] The applicant further submits that the Officer's findings regarding the stay of removal were made without regard to the material before him. However, the FOSS notes show that the Officer acknowledged receipt of the criminal court documents submitted by the applicant. The applicant made no submissions to the Officer about the enforceability of the removal order, so the sole mention of this issue was the note in her immigration file about the "stay" granted by the CBSA Officer. Given my finding that a stay of removal exceeds the jurisdiction of the CBSA Officer, it would be reasonable for the Officer to conclude that Mr. Liyanage had only been granted a deferral of removal. This conclusion was based on the answers and evidence provided by the applicant, as well as the information contained in her immigration file.

[34] Once the Officer made that determination, he or she had to refuse the application. Immigration Officers may apply a "flexible and constructive approach" in processing live-in caregiver applications (*Turingan v Canada (Minister of Employment and Immigration)* (1993), 72 FTR 316, 24 Imm LR (2d) 113 (FC), *Santos v Canada (Citizenship and Immigration)*, 2009 FC 360, 343 FTR 284), but this does not mean that they can depart from the statutory requirements for membership in the class. In assessing these applications, Immigration Officers are exercising a ministerial duty which involves "no element of discretion or independent judgment" (*Laluna v Canada (Citizenship and Immigration)* (2000), 182 FTR 134, 95 ACWS (3d) 545 at para 16 [*Laluna*]). This means that the Officer had no ability to grant the application

once he or she had determined that the requirement in subsection 113(1)(e) of the Act had not been met (*Abalos* at para 42, see also *Lumayno v Canada (Citizenship and Immigration)*, 2009 FC 765, 179 ACWS (3d) 911).

[35] I find that the Officer's conclusion that Mr. Liyanage is subject to an enforceable removal order falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. As such, the Officer reasonably concluded that the applicant could not be a member of the live-in caregiver class for the purposes of permanent residence.

B. ***Did the Officer breach the duty of procedural fairness?***

[36] The applicant submits that the Officer breached the duty of procedural fairness because the terms of the fairness letter were overly broad, which had the effect of obscuring the case she had to meet and denying her a meaningful opportunity to respond. She argues that in these circumstances the Officer should have made another, more specific request for information based on his or her concerns regarding her eligibility under paragraph 113(1)(e).

[37] I agree with the respondent that the applicant has been afforded all procedural fairness required in the circumstances. The fairness letter fully disclosed the source of the Officer's concerns, having listed all possible grounds for refusal under paragraph 113(1)(e) of the Act. She was granted an extension of time to provide her response. The fact remains, however, that her submissions did not provide adequate evidence to suggest that Mr. Liyanage was not subject to an enforceable removal order. In fact, she did not mention this issue in her response at all, choosing to focus only on the issue of Mr. Liyanage's criminal charges. The onus is on the

applicant and her failure to furnish information in support of her case cannot be blamed on the Officer.

[38] The applicant submits that the Officer further breached the duty of fairness by failing to consider her application in light of the legitimate expectation created by the stay of removal granted by the CBSA Officer. In my view, there can be no legitimate expectation based on the CBSA's misuse of the word "stay" in their discussions or in the FOSS notes. This may have caused some confusion for the applicant, but as discussed earlier, the CBSA Officer did not have discretion to grant a stay of removal. The doctrine of legitimate expectation is a procedural doctrine that cannot give rise to substantive rights or be used to counter express parliamentary intent (*Canada (Minister of Citizenship and Immigration) v Dela Fuente*, 2006 FCA 186 at para 19, [2007] 1 FCR 387).

[39] The applicant also claims that the Officer breached the duty of fairness by providing inadequate reasons. The Officer was not required to discuss every factor which played a part in the decision-making process (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). This was a discretionary decision and the reasons for the refusal are transparent and intelligible.

[40] Finally, the applicant contends that the Officer had the duty to provide her with some basic information with regard to alternate permanent residency applications, such as deleting Mr. Liyanage from her application. She is relying on the case of *Ycasas v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 554 [*Ycasas*], in support of that proposition.

[41] *Ycasas* does not appear to have been followed and I have seen nothing like it in other matters decided before this Court. Other than the initial fairness letter, I'm not persuaded that the courts have imposed any further obligation on visa officers to continue to follow-up with applicants or to make suggestions. This is consistent with the generally held view that immigration officers are under no duty to highlight weaknesses, request further submissions to overcome these weaknesses or otherwise provide advice to enhance the chances of success of applicants be it in the context of a PRRA application (*Adetunji v Canada (Minister of Citizenship and Immigration)*, 2012 FC 708 at para 19, [2012] FCJ No 698; *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, at para 22, [2008] FCJ No 1308), an application for permanent residence for humanitarian and compassionate considerations (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 CAF 189, at para 45), or a visa application (*Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264, 429 FTR 93 at paras 22-24; *Ansari v Canada (Citizenship and Immigration)*, 2013 FC 849 at para 18; *Sharma v Canada (Citizenship and Immigration)*, 2009 FC 786, at para 8; *Chen v Canada (Citizenship and Immigration)*, 2011 FC 1279, at para 22; *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284, 247 FTR 147, at para 23).

[42] The same approach was recently followed in the context of an application for permanent residence under the Convention refugees abroad class in *Mariyadas v Canada (Minister of Citizenship and Immigration)*, 2015 FC 741. This Court held that although applicants for permanent residence under that class were to be given a full opportunity to identify the basis of their fears, officers did not have a duty to suggest possible grounds of protection for the applicant to adopt in his or her application (*Mariyadas*, at para 32).

[43] I see no reason to depart from these principles when someone applies for permanent residence as a member of the live-in caregiver class.

[44] Neither party has proposed a question of general importance. None will be certified.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is dismissed; and

2. No question is certified.

"René LeBlanc"

Judge

APPENDIX A

The following provisions of the Act arise in this proceeding:

Immigration and Refugee Protection Act, SC 2001, c 27	*Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27
48. (1) A removal order is enforceable if it has come into force and is not stayed.	**48**. (1) La mesure de renvoi est exécutoire depuis sa prise d'effet dès lors qu'elle ne fait pas l'objet d'un sursis.
(2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and it must be enforced as soon as is reasonably practicable.	(2) L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être appliquée dès que les circonstances le permettent.
49. (1) A removal order comes into force on the latest of the following dates: (a) the day the removal order is made, if there is no right to appeal; (b) the day the appeal period expires, if there is a right to appeal and no appeal is made; and (c) the day of the final determination of the appeal, if an appeal is made.	**49**. (1) La mesure de renvoi non susceptible d'appel prend effet immédiatement; celle susceptible d'appel prend effet à l'expiration du délai d'appel, s'il n'est pas formé, ou quand est rendue la décision qui a pour résultat le maintien définitif de la mesure.
(2) Despite subsection (1), a removal order made with respect to a refugee protection claimant is conditional and comes into force on the latest of the following dates:	(2) Toutefois, celle visant le demandeur d'asile est conditionnelle et prend effet :

(a) the day the claim is determined to be ineligible only under paragraph 101(1)(e);

a) sur constat d'irrecevabilité au seul titre de l'alinéa 101(1)e);

(b) in a case other than that set out in paragraph (a), seven days after the claim is determined to be ineligible;

b) sept jours après le constat, dans les autres cas d'irrecevabilité prévus au paragraphe 101(1);

(c) if the claim is rejected by the Refugee Protection Division, on the expiry of the time limit referred to in subsection 110(2.1) or, if an appeal is made, 15 days after notification by the Refugee Appeal Division that the claim is rejected;

c) en cas de rejet de sa demande par la Section de la protection des réfugiés, à l'expiration du délai visé au paragraphe 110(2.1) ou, en cas d'appel, quinze jours après la notification du rejet de sa demande par la Section d'appel des réfugiés;

(d) 15 days after notification that the claim is declared withdrawn or abandoned; and

d) quinze jours après la notification de la décision prononçant le désistement ou le retrait de sa demande;

(e) 15 days after proceedings are terminated as a result of notice under paragraph 104(1)(c) or (d).

e) quinze jours après le classement de l'affaire au titre de l'avis visé aux alinéas 104(1)c) ou d).

50. A removal order is stayed

50. Il y a sursis de la mesure de renvoi dans les cas suivants :

(a) if a decision that was made in a judicial proceeding — at which the Minister shall be given the opportunity to make submissions — would be directly contravened by the enforcement of the removal order;

a) une décision judiciaire a pour effet direct d'en empêcher l'exécution, le ministre ayant toutefois le droit de présenter ses observations à l'instance;

(b) in the case of a foreign national sentenced to a term of imprisonment in Canada, until the sentence is completed;

b) tant que n'est pas purgée la peine d'emprisonnement infligée au Canada à l'étranger;

(c) for the duration of a stay imposed by the Immigration Appeal Division or any other court of competent jurisdiction;	c) pour la durée prévue par la Section d'appel de l'immigration ou toute autre juridiction compétente;
(d) for the duration of a stay under paragraph 114(1)(b); and	d) pour la durée du sursis découlant du paragraphe 114(1);
(e) for the duration of a stay imposed by the Minister.	e) pour la durée prévue par le ministre.

The following provisions of the Regulations arise in this proceeding:

Immigration and Refugee Protection Regulations, SOR/2002-227	*Règlement sur l'immigration et la protection des réfugiés*, DORS/2002-227
2. The definitions in this section apply in these Regulations.	**2**. Les définitions qui suivent s'appliquent au présent règlement.
"live-in caregiver"	« aide familial »
« aide familial »	"live-in caregiver"
"live-in caregiver" means a person who resides in and provides child care, senior home support care or care of the disabled without supervision in the private household in Canada where the person being cared for resides.	« aide familial » Personne qui fournit sans supervision des soins à domicile à un enfant, à une personne âgée ou à une personne handicapée, dans une résidence privée située au Canada où résident à la fois la personne bénéficiant des soins et celle qui les fournit.
[…]	[…]
110. The live-in caregiver class is prescribed as a class of foreign nationals who may become permanent residents on the basis of the requirements of this Division.	**110**. La catégorie des aides familiaux est une catégorie réglementaire d'étrangers qui peuvent devenir résidents permanents, sur le fondement des exigences prévues à la présente section.

[…]

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

[…]

(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;

114. The requirement with respect to a family member of a live-in caregiver applying to remain in Canada as a permanent resident is that the family member was included in the live-in caregiver's application to remain in Canada as a permanent resident at the time the application was made.

114.1 A foreign national who is a family member of a live-in caregiver who makes an application to remain in Canada as a permanent resident shall become a permanent resident if, following an examination, it is established that

(a) the live-in caregiver has become a permanent resident; and

(b) the foreign national is not inadmissible.

[…]

113. (1) L'étranger fait partie de la catégorie des aides familiaux si les exigences suivantes sont satisfaites :

[…]

e) ni lui ni les membres de sa famille ne font l'objet d'une mesure de renvoi exécutoire ou d'une enquête aux termes de la Loi, ni d'un appel ou d'une demande de contrôle judiciaire à la suite d'une telle enquête;

114. L'exigence applicable à la demande de séjour à titre de résident permanent d'un membre de la famille d'un aide familial est que l'intéressé était visé par la demande de séjour de ce dernier à titre de résident permanent au moment où celle-ci a été faite.

114.1 L'étranger qui est un membre de la famille de l'aide familial qui présente une demande de séjour au Canada à titre de résident permanent devient résident permanent si, à l'issue d'un contrôle, les éléments ci-après sont établis :

a) l'aide familial est devenu résident permanent;

b) l'étranger n'est pas interdit de territoire.

115. The applicable requirements set out in sections 112 to 114.1 must be met when an application for a work permit or temporary resident visa is made, when the permit or visa is issued and when the foreign national becomes a permanent resident.

115. Les exigences applicables prévues aux articles 112 à 114.1 doivent être satisfaites au moment où la demande de permis de travail ou de visa de résident temporaire est faite, au moment de leur délivrance ainsi qu'au moment où l'étranger devient résident permanent.

[…]

[…]

230. (1) The Minister may impose a stay on removal orders with respect to a country or a place if the circumstances in that country or place pose a generalized risk to the entire civilian population as a result of

230. (1) Le ministre peut imposer un sursis aux mesures de renvoi vers un pays ou un lieu donné si la situation dans ce pays ou ce lieu expose l'ensemble de la population civile à un risque généralisé qui découle :

(a) an armed conflict within the country or place;

a) soit de l'existence d'un conflit armé dans le pays ou le lieu;

(b) an environmental disaster resulting in a substantial temporary disruption of living conditions; or

b) soit d'un désastre environnemental qui entraîne la perturbation importante et momentanée des conditions de vie;

(c) any situation that is temporary and generalized.

c) soit d'une circonstance temporaire et généralisée.

(2) The Minister may cancel the stay if the circumstances referred to in subsection (1) no longer pose a generalized risk to the entire civilian population.

(2) Le ministre peut révoquer le sursis si la situation 'expose plus l'ensemble de la population civile à un risque généralisé.

(3) The stay does not apply to a person who

(3) Le paragraphe (1) ne s'applique pas dans les cas suivants:

(a) is inadmissible under subsection 34(1) of the Act on security grounds;

a) l'intéressé est interdit de territoire pour raison de sécurité au titre du paragraphe 34(1) de la Loi;

(b) is inadmissible under subsection 35(1) of the Act on grounds of violating human or international rights;

b) il est interdit de territoire pour atteinte aux droits humains ou internationaux au titre du paragraphe 35(1) de la Loi;

(c) is inadmissible under subsection 36(1) of the Act on grounds of serious criminality or under subsection 36(2) of the Act on grounds of criminality;

c) il est interdit de territoire pour grande criminalité ou criminalité au titre des paragraphes 36(1) ou (2) de la Loi;

(d) is inadmissible under subsection 37(1) of the Act on grounds of organized criminality;

d) il est interdit de territoire pour criminalité organisée au titre du paragraphe 37(1) de la Loi;

(e) is a person referred to in section F of Article 1 of the Refugee Convention; or

e) il est visé à la section F de l'article premier de la Convention sur les réfugiés;

(f) informs the Minister in writing that they consent to their removal to a country or place to which a stay of removal applies.

f) il avise par écrit le ministre qu'il accepte d'être renvoyé vers un pays ou un lieu à l'égard duquel le ministre a imposé un sursis.

231. (1) Subject to subsections (2) to (4), a removal order is stayed if the subject of the order makes an application for leave for judicial review in accordance with section 72 of the Act with respect to a decision of the Refugee Appeal Division that rejects, or confirms the rejection of, a claim for refugee protection, and the stay is effective until the earliest of the following:

231. (1) Sous réserve des paragraphes (2) à (4), la demande d'autorisation de contrôle judiciaire faite conformément à l'article 72 de la Loi à l'égard d'une décision rendue par la Section d'appel des réfugiés rejetant une demande d'asile ou en confirmant le rejet emporte sursis de la mesure de renvoi jusqu'au premier en date des événements suivants :

(a) the application for leave is refused,

a) la demande d'autorisation est rejetée;

(b) the application for leave is granted, the application for judicial review is refused and no question is certified for the Federal Court of Appeal,

b) la demande d'autorisation est accueillie et la demande de contrôle judiciaire est rejetée sans qu'une question soit certifiée pour la Cour fédérale d'appel;

(c) if a question is certified by the Federal Court,

c) si la Cour fédérale certifie une question :

(i) the appeal is not filed within the time limit, or

(i) soit l'expiration du délai d'appel sans qu'un appel ne soit interjeté,

(ii) the Federal Court of Appeal decides to dismiss the appeal, and the time limit in which an application to the Supreme Court of Canada for leave to appeal from that decision expires without an application being made,

(ii) soit le rejet de la demande par la Cour d'appel fédérale et l'expiration du délai de dépôt d'une demande d'autorisation d'en appeler à la Cour suprême du Canada sans qu'une demande ne soit déposée;

(d) if an application for leave to appeal is made to the Supreme Court of Canada from a decision of the Federal Court of Appeal referred to in paragraph (c), the application is refused, and

d) si l'intéressé dépose une demande d'autorisation d'interjeter appel auprès de la Cour suprême du Canada du jugement de la Cour d'appel fédérale visé à l'alinéa c), la demande est rejetée;

(e) if the application referred to in paragraph (d) is granted, the appeal is not filed within the time limit or the Supreme Court of Canada dismisses the appeal.

e) si la demande d'autorisation visée à l'alinéa d) est accueillie, l'expiration du délai d'appel sans qu'un appel ne soit interjeté ou le jugement de la Cour suprême du Canada rejetant l'appel.

(2) Subsection (1) does not apply if, when leave is applied for, the subject of the removal order is a designated foreign national or a national of a country that is designated under subsection 109.1(1) of the Act.

(2) Le paragraphe (1) ne s'applique pas si, au moment de la demande d'autorisation de contrôle judiciaire, l'intéressé est un étranger désigné ou un ressortissant d'un pays qui fait l'objet de la désignation visée au paragraphe 109.1(1) de la Loi.

(3) There is no stay of removal if

(3) Il n'est pas sursis à la mesure de renvoi si l'intéressé fait l'objet :

(a) the person is subject to a removal order because they are inadmissible on grounds of serious criminality; or

a) soit d'une mesure de renvoi du fait qu'il est interdit de territoire pour grande criminalité;

(b) the subject of the removal order resides or sojourns in the United States or St. Pierre and Miquelon and is the subject of a report prepared under subsection 44(1) of the Act on their entry into Canada.

b) soit, s'il réside ou séjourne aux États-Unis ou à Saint-Pierre-et-Miquelon, du rapport prévu au paragraphe 44(1) de la Loi à son entrée au Canada.

4) Subsection (1) does not apply if the person applies for an extension of time to file an application referred to in that subsection.

(4) Le paragraphe (1) ne s'applique pas si la personne demande une prolongation du délai pour déposer l'une des demandes visées à ce paragraphe.

232. A removal order is stayed when a person is notified by the Department under subsection 160(3) that they may make an application under subsection 112(1) of the Act, and the stay is effective until the earliest of the following events occurs:

(a) the Department receives confirmation in writing from the person that they do not intend to make an application;

(b) the person does not make an application within the period provided under section 162;

(c) the application for protection is rejected;

(d) [Repealed, SOR/2012-154, s. 12]

(e) if a decision to allow the application for protection is made under paragraph 1114(1)(a) of the Act, the decision with respect to the person's application to remain in Canada as a permanent resident is made; and

(f) in the case of a person to whom subsection 112(3) of the Act applies, the stay is cancelled under subsection 114(2) of the Act.

232. Il est sursis à la mesure de renvoi dès le moment où le ministère avise l'intéressé aux termes du paragraphe 160(3) qu'il peut faire une demande de protection au titre du paragraphe 112(1) de la Loi. Le sursis s'applique jusqu'au premier en date des événements suivants:

a) le ministère reçoit de l'intéressé confirmation écrite qu'il n'a pas l'intention de se prévaloir de son droit;

b) le délai prévu à l'article 162 expire sans que l'intéressé fasse la demande qui y est prévue;

c) la demande de protection est rejetée;

d) [Abrogé, DORS/2012-154, art. 12]

e) s'agissant d'une personne à qui l'asile a été conféré aux termes du paragraphe 114(1) de la Loi, la décision quant à sa demande de séjour au Canada à titre de résident permanent;

f) s'agissant d'une personne visée au paragraphe 112(3) de la Loi, la révocation du sursis prévue au paragraphe 114(2) de la Loi.

233. A removal order made against a foreign national, and any family member of the foreign national, is stayed if the Minister is of the opinion that the stay is justified by humanitarian and compassionate considerations, under subsection 25(1) or 25.1(1) of the Act, or by public policy considerations, under subsection 25.2(1) of the Act. The stay is effective until a decision is made to grant, or not grant, permanent resident status.

233. Si le ministre estime, aux termes des paragraphes 25(1) ou 25.1(1) de la Loi, que des considérations d'ordre humanitaire le justifient ou, aux termes du paragraphe 25.2(1) de la Loi, que l'intérêt public le justifie, il est sursis à la mesure de renvoi visant l'étranger et les membres de sa famille jusqu'à ce qu'il soit statué sur sa demande de résidence permanente.

234. For greater certainty and for the purposes of paragraph 50(a) of the Act, a decision made in a judicial proceeding would not be directly contravened by the enforcement of a removal order if

234. Il est entendu que, pour l'application de l'alinéa 50a) de la Loi, une décision judiciaire n'a pas pour effet direct d'empêcher l'exécution de la mesure de renvoi s'il existe un accord entre le procureur général du Canada ou d'une province et le ministère prévoyant:

(a) there is an agreement between the Department and the Attorney General of Canada or the attorney general of a province that criminal charges will be withdrawn or stayed on the removal of the person from Canada; or

a) soit le retrait ou la suspension des accusations au pénal contre l'étranger au moment du renvoi;

(b) there is an agreement between the Department and the Attorney General of Canada or the attorney general of a province to withdraw or cancel any summons or subpoena on the removal of the person from Canada.

b) soit le retrait de toute assignation à comparaître ou sommation à l'égard de l'étranger au moment de son renvoi.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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