High Commission of Canada Haut-commissariat du Canada

Commonwealth Avenue
Canberra ACT 2600

2 November, 2009

Mr Michael Danby MP
Chairman
Joint Standing Committee of Migration
Parliament House
Canberra ACT 2600

Submission No 86

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BY: MG

Dear Chairman,

Further to your letter of September 17, 2009, I am pleased to enclose the response from the Medical Branch of Citizenship and Immigration Canada. Citizenship and Immigration is the department responsible for the policy development and delivery of health programs related to applications for temporary and permanent residence in Canada.

I am hopeful that the enclosed response adequately addresses the interests of the Joint Standing Committee on Migration. If that is not the case, or if you or the Committee require additional information, please do not hesitate to contact us again.

Yours sincerely,

Michael Leir
High Commissioner

Canada

Background regarding the determination of Medical Inadmissibility and the Immigration and Refugee Protection Act

Inadmissibility on health grounds

The Immigration and Refugee Protection Act (IRPA) section 38(1) legislates that a foreign national is inadmissible to Canada on health grounds if their health condition:

(a) is likely to be a danger to public health;
(b) is likely to be a danger to public safety; or
(c) might reasonably be expected to cause excessive demand on health or social services.

Immigration Medication Examinations

Applicants are assessed for inadmissibility on health grounds with an Immigration Medical Examination. This examination consists of a history and complete physical examination for all applicants as well as urinalysis (5 and up), syphilis and HIV testing (15 and up), chest X-ray (11 and up), and further tests as required upon review of the initial examination.

Section R30(1) of the IRP Regulations outlines which applicants require immigration medical examinations. This includes all individuals applying for permanent residency, as well as certain temporary resident applicants.

Individualized Assessment

The rendering of the decision of Medical Inadmissibility, by the reviewing Medical Officer, is based on a detailed, individual evaluation of each applicant and their dependants. This evaluation consists of the determination of the underlying health condition itself, its prognosis and the anticipated medical and social services which are and will be required to diagnose, treat and overall manage that particular health condition as well as the determination of whether that health condition is likely to cause a risk to Public Health or Public Safety.

It is therefore important to emphasize that it is *not* the health condition per se that renders an applicant or their dependant Medically Inadmissible to Canada, but rather it is the health and social services needs, which are directly associated with that health condition, or the potential for that health condition in that individual to be a risk to Public Health or Public Safety, which is the basis upon which that decision is made.

Excessive demand on health and social services

Definition

As outlined above, section 38(1) (c) of IRPA states that an applicant is inadmissible to Canada on health grounds if the applicant's health condition is likely to cause excessive demand on health or social services. The IRP Regulations define excessive demand as:

(a) a demand on health services or social services for which the anticipated costs would likely exceed average Canadian per capita health services and social services costs over a period of five consecutive years immediately following the most recent medical examination required by these Regulations, unless there is evidence that significant costs are likely to be incurred beyond that period, in which case the period is no more than 10 consecutive years; or

(b) a demand on health services or social services that would add to existing waiting lists and would increase the rate of mortality and morbidity in Canada as a result of the denial or delay in the provision of those services to Canadian citizens or permanent residents.

Exemptions

Under IRPA 38(2), certain applicants, including refugees and refugee claimants, and family class sponsored spouses/partners and their dependent children, are exempt from excessive demand assessment. Applicants who are excessive demand exempt (EDE) may be permitted to enter Canada regardless of their health condition (HIV, cancer, renal disease, etc.), assuming they are not a danger to public health or to public safety.

Assessment of excessive demand

Excessive demand is assessed based on anticipated health and social service costs of an applicant over a 5 to 10 year period, based on a cost threshold, and the potential impact on waiting lists. The "cost threshold for excessive demand" represents the average annual per capita health and social service costs for Canadians, and is currently $5,143 (or $25,715 over 5 years).

When CIC assesses applicants with health conditions for excessive demand, it is the costs to Canadian health and social services and effect on waiting lists that are relevant, not the mere presence of a health condition. Each applicant is assessed on an individual basis by CIC Medical Officers, taking into consideration the current state of their health condition(s), the likely prognosis, and the costs of anticipated health and/or social service requirements in the next 5 to 10 years and the potential impact on waiting lists.

Excessive Demand Threshold Calculation

CIC uses the average per capita cost for health and social services established by the Canadian Institute for Health Information (CIHI) annually and adds a supplementary amount for specific social services defined in regulations not included in CIHI data (e.g. Special Education).

Procedural Fairness and the Role of the Visa Officer

In cases where the Medical Officer is of the opinion, after performing a detailed and individualized analysis of an applicant's Immigration Medical Assessment, that that applicant is Medically Inadmissible, this opinion is transmitted to the Visa Officer handling the visa application for that applicant. It is then the responsibility of the Visa Officer to send out a Procedural Fairness letter. This letter informs the applicant of the preliminary assessment of Medical Inadmissibility and allows the applicant (and in the cases of some applicants, their parents or guardians) to submit additional information under Procedural Fairness to challenge the opinion of the Medical Officer.

In situations where an applicant has been found Medically Inadmissible for the Health Care services they will need (or a combination of Health Care and Social services) associated with their Medical Condition, the only way to alter the original opinion of the Medical Officer is to provide medical documents which challenge the diagnosis of the Medical Condition and more importantly challenge the Health Care service requirements associated with that Medical Condition.

In cases where the applicant has been found Medically Inadmissible for purely the Social Services that they will likely require, the process of Procedural Fairness is similar to that stated above in that it allows the applicant the opportunity to challenge the diagnosis of the Medical Condition and its Social service requirements. However, there is also the option, for the applicant or their family, to furnish to the Visa Officer a formalized and detailed plan as to how the Social Services that the applicant requires can be provided privately, without impacting on the public purse.

If the applicant chooses not to challenge the contents of the Procedural Fairness letter (the applicant has sixty (60) days after its reception to do so) or if the Procedural Fairness information submitted does not alter the opinion of the Medical Officer or the Visa Officer treating the application, then the applicant's visa application is refused. If, on the other hand, the supplemental information submitted under Procedural Fairness does alter the original opinion of the Medical Officer or the Visa Officer, then the applicant will very likely have a visa issued to them, if medical issues were the only ones outstanding.

Finally, it should be noted, that visa issuance is the responsibility of the Visa Officer and that the Medical Officer's role is to submit a medical opinion to the responsible Visa

Officer, who will then make a final decision regarding the issuance of the visa to the applicant, taking into account but not being bound by the opinion of the Medical Officer.

Conclusion

Canada, like Australia is an important receiving country in terms of immigration with approximately 250,000 Permanent Residents arriving yearly. All of these Permanent Residents (and some Temporary Residents requiring visas to enter Canada) must undergo an Immigration Medical Examination/Assessment in order to determine if the applicant is Medically Admissible to Canada. The determination of Medical Inadmissibility is based on the three criteria outlined earlier in this document (i.e. Danger to Public Health, Public Safety and Excessive Demand). The determination of Medical Inadmissibility is not based on the medical condition per se, but rather as a result of a detailed and individualized assessment of each applicant's Immigration Medical Examination, which takes into account the costs and waiting lists of the Medical and Social services which the applicant is likely to require over a five (or ten) year period.

If the applicant is not in agreement with the Medical Officer's opinion (as communicated through the Visa Officer) regarding the determination of Medical Inadmissibility, then the applicant can challenge this opinion via the process Procedural Fairness. Finally, it is the Visa Officer who makes the final decision regarding the issuance of a Visa after taking into account, amongst many factors, the opinion of the Medical Officer who has evaluated and rendered a decision regarding Medical Inadmissibility of the applicant.