

JAN 30 2015

F-12236
GCDOCS-38552585

MEMORANDUM TO THE MINISTER

**UPDATE ON PHOTO IDENTIFICATION REQUIREMENTS FOR APPLICATIONS AS
RELATED TO THE AMISH COMMUNITY**

FOR INFORMATION

SUMMARY

- The purpose of this memorandum is to provide you with an update on photo requirements and exemptions for the Amish community on religious grounds when applying for Citizenship and Immigration Canada's (CIC) programs.
- Visual identification is critical in maintaining and strengthening identity management and in ensuring the integrity of both CIC and its programs. Any resulting limits or restrictions on an individual's privacy or infringements of their religious beliefs are reasonable in a free and democratic society. This position is supported by a number of judicial decisions involving both the federal and provincial governments.
- CIC will continue to apply a requirement for photo identification in its programs without exemptions.

BACKGROUND:

- You have received inquiries from the Amish community requesting an exemption from CIC's requirement to submit photographs with applications for departmental programs. The use of a photograph is an integral part of application processes for temporary residents (TRs), permanent residents (PRs), eMedicals, passports and citizenship, to support the integrity and security of CIC's programs.
- Photographs are mandatory evidence related to identity and are required in support of processing applications under subsections 16(2) and 50(1) of the *Immigration and Refugee Protection Regulations*, section 3.1 of the *Citizenship Act Regulations*, and sections 3, 5, 8.1(2) and 9(a)(1)(i) of the *Canadian Passport Order*.
- Requirements for photo identification have been questioned and challenged, in particular by individuals who object to having their photo taken based on their religious practices and beliefs. In particular, some dissenting Protestant groups have expressed reservations about these requirements (e.g. the Old Order Amish, Hutterian Brethren).

Canada

Generally, governmental measures infringing the Charter rights need to satisfy the proportionality test that the photo requirement:

- a) is rationally connected to the substantial objective; and
 - b) minimally impairs on the Charter right and that the negative impacts on the rights do not outweigh the benefits of the photo requirement.
- The requirement for a photo identification as part of CIC's programs meets the proportionality test as CIC is considered an authoritative source for establishing the identity of persons born outside of Canada and undertakes this through high program integrity standards. Exempting one or more groups, based on religious freedoms, would diminish the overall integrity of CIC's programs, as well as impact the immigration information relied upon as a basis to obtain other pieces of personal identification by individuals from federal, provincial and territorial partners (e.g. driver's license, provincial/territorial health card), and from other countries.
 - Several court decisions support this position. In 2009, the Supreme Court of Canada (SCC) upheld a universal photo requirement for Alberta driver's licenses in the case of *Alberta v. the Hutterian Brethren of Wilson Colony*, 2009 SCC 37, (2009) 2 CR 567. The SCC found that the goal of minimizing the risk of identity theft associated with driver's licences justified a universal photo requirement. However, in that case, the evidence disclosed no alternative measures which would substantially satisfy the Government's objective of identity-related fraud while allowing the claimants to avoid being photographed.
 - Recently, CIC undertook a review of its policy regarding specification for photographs in order to align with International Civil Aviation Organization (ICAO) standards as well as to bring consistency across business lines. Specific examples of the use of photo identification in CIC programs include the following:
 - Photo identification is mandatory for Canadian passport issuance. Effective October 20, 2014, new supplementary identification requirements were put in place and as a result, at least one piece of supplementary identification must contain a photo. In order to be internationally accepted as evidence of citizenship and identity, Canadian passports and other travel documents are required to comply with the international standards established by the ICAO. These standards include a mandatory displayed portrait of the document holder.
 - As part of the Temporary Resident Biometrics Project implemented in 2013, applicants from 29 countries and one territory must have a digital photo taken (i.e. live capture) during biometric enrolment when making an application for a TR visa, work permit, or study permit (per legislative and regulatory requirement). In November 2014, the Cabinet Committee on Priorities and Planning approved a proposal to expand biometric screening to all TR and PR applications; current implementation is planned for 2018.
 - When eMedical was implemented in 2012, the use of a photo (i.e. live capture) became a mandatory identity and security feature for departmental medical files. No immigration medical examination can be submitted through eMedical without a photo. In 2013, members of the Old Order Amish community wrote to the then Minister requesting exemption from the photo requirements for eMedical on religious grounds, which was not granted (see Annex 1).

- Other countries follow similar practices. The United States Citizenship and Immigration Services (USCIS) currently have a USCIS Policy for *Accommodating Religious Beliefs during Fingerprint and Photograph Capture* that applies to the members of Amish communities who may travel between Canada and the United States. The policy does not allow an exemption from photo identification in any situation, based on religious grounds.

CURRENT STATUS:

- Three recent cases in Canada spousal applications have been identified and are now on hold pending further direction as there is no existing policy or review underway on photographic exemption based on religious grounds. The main outstanding requirement for these cases is medicals, which require a photo (i.e. live capture) of the applicant.

COMMUNICATIONS IMPLICATIONS:

- A low-profile, responsive approach is recommended. Should media enquiries arise, CIC will develop responses outlining the Government's position, using evergreen messages on security and identification.

NEXT STEPS:

- Should a request for an exemption on taking a photograph based on religious grounds be received in the future from the Amish community, CIC's response would be that photo identification is a requirement for the Department and is applied across all of its programs without exemptions.


Anita Biguzs

Annex: CIC's Response Letter



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

OTTAWA
K1A 1L1

NOV 19 2013

Dear

I would like to acknowledge receipt of your letters of March 25, 2013, and June 28, 2013, as well as the letter from the constituency manager dated July 22, 2013, concerning the photo-identification requirement for immigration applications. I apologize for the delay in responding.

I have also received copies of letters on the same topic that were addressed to the Honourable Rona Ambrose, Minister of Health (July 24, 2013), to Mr. Ben Lobb, M.P. for Huron-Bruce, and Mr. Dave Mackenzie, M.P. for Oxford (February 15, 2013), and to the Honourable Jason Kenney, former Minister of Citizenship and Immigration (February 14, 2013).

I regret to inform you that Citizenship and Immigration Canada (CIC) cannot exempt some applicants from the photo requirement. I understand that has been done in the past at the Kitchener office, however, the practice is not consistent with the Department's policies on identification and can no longer be accommodated.

CIC has taken steps to better serve our clients, make our processes faster and easier for applicants and strengthen the integrity and security of Canada's immigration system. One of those steps is the implementation of e-Medical, an online tool for doctors to record and send results of immigration medical exams to CIC. It is more accurate, convenient and faster than paper-based processing.

Canada

- 2 -

The use of a photo for e-Medical is essential in identifying the applicant and ensuring the integrity of the application process, similar to why a picture is required to get a passport. In addition, the requirement of a photo protects the applicant from potential identity theft and helps CIC ensure the integrity of Canada's immigration system.

The use of a photo has been incorporated into e-Medical as a mandatory identity and security feature. Since January 2013, doctors working in countries around the world where the e-Medical has been implemented and who are approved by CIC to conduct immigration medical exams (such as Dr. [redacted] in the Kitchener area), are now required to use e-Medical. Documents cannot be submitted through e-Medical without proper identification of the applicant, which includes a digital photograph of all applicants.

I understand that the photo requirement may not be well received within the Old Order Amish and Mennonite community. However, I trust that you will agree that efforts to protect our immigration system from fraud, improve program integrity and make our processes faster and easier for applicants are integral to building a stronger, better and safer Canada.

I trust that the information provided is of assistance.

Sincerely,



Dr. Patrick Theriault
Senior Medical Officer
Ottawa Regional Medical Office
Health Branch