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Caceres.Lucy

From: Immigration Representatives / Représentants immigration (IRCC)
Sent: April 23, 2018 10:49 AM
To:
Cc: Immigration Representatives / Représentants immigration (IRCC)
Subject: FW: Implied Status - REP-2018-0292

Good day,

Question 1:

If a Foreign National in Canada with valid temporary resident status applies to extend the period authorized for their stay, per IRPR section 183(5)(a&b) will they benefit from Implied Status by operation of S.183(6) REGARDLESS of what type of temporary resident status (worker, student, visitor) they hold when they apply to extend, and what type of temporary status they are applying for with the extension?

Response:

Thank you for your questions.

In order to respond to your questions, we are required to separate the questions by the issues.

Will the applicant benefit from implied status if a foreign national in Canada with temporary resident status applies to extend their period of authorized stay?

Yes. Temporary residents that apply to extend their period of authorized stay in Canada will benefit from implied status until a decision is made on their application by operation of law. It should be noted that if the applicant applies for a different kind of permit (i.e., changing the conditions of their stay), they can no longer conduct any of the activities authorized by the original permit once it expires. Additionally, if the application is refused, the applicant may only remain in Canada until the expiry date of their current temporary resident status.

Implied status is actually temporary resident status granted by operation of law. The implied status is triggered when a temporary resident (i.e., visitor, student, worker) applies for an extension of their authorized stay prior to the expiry of their status.

For example, if a foreign national applies to extend their Temporary Resident status as a temporary worker:

Section R201 allows foreign nationals to apply for a renewal of their work permit only if the application is made before their present work permit expires and they have complied with all conditions imposed on their entry into Canada. Paragraph R186(u) authorizes foreign nationals to work without a permit in the event that they submitted an application under section R201, they have remained in Canada after the expiry of their work permit and they have continued to comply with the conditions set out on the expired work permit (other than the expiry date), and a decision on the renewal application has not yet been made.

Note: It is not "implied status" under subsections R183(5) and (6) that allows a foreign national to keep working while their application for extension is in process. The foreign national must meet the requirements of paragraph R186(u) to be able to continue working while their TR status had been extended by operation of law. Paragraph R186(u) applies only until a decision is made on the original work permit renewal application.

Once the original work permit expires, the foreign national cannot submit another application under section R201, because they no longer have a valid work permit. Therefore, they cannot trigger the requirements of paragraph R186(u) if they are submitting an application for restoration with a work permit application.

It should be noted that “status” and “authorization” are separate in the Immigration and Refugee Protection Act (IRPA). A foreign national who submits the “Application to change conditions, extend my stay or remain in Canada as a Worker” application form [IMM 5710] is in effect submitting two applications in one. The foreign national is applying under section R181 for an “extension of status” and under section R201 of to “renew the work permit”. If submitted before the expiry of their present work permit, this combined application has 3 effects:

1. Should a decision not be made on the “application” under section R181 before the expiration of their present status, the foreign national will be allowed to remain by operation of law (implied status) under subsection R183(5).
2. The application for renewal under section R201 triggers the ability for the foreign national to “work without a permit” under paragraph R186(u), unless they leave Canada.
3. Any conditions imposed on the initial work permit carry over into the implied status period under subsection R183(6). For example, if a person held an open work permit, they may continue working for any employer until the new work permit is issued or the application is refused.

Question 2:

A secondary question that arises from the first question:

Is implied Status considered Valid Status generally, and more specifically for the purposes of an Inside Canada Class SCLPC application that includes an application for an open work permit under the Spousal open work permit pilot program?

Possible scenario: (assuming that the Work Permit application is complete and the correct fees are paid)

A principal applicant who has valid VISITOR status in Canada, applies within the SCLPC class and includes a Work Permit application. Their SCLPC application was received by a processing office BEFORE their Visitor Status expired. Their Visitor status expires PRIOR to issuance of the Open Work Permit. Is this hypothetical client still eligible to benefit from the 4 month processing of the open work permit, by virtue of having applied to extend their temporary status in Canada prior to the expiry of their current temporary status in Canada?

Response:

Yes. Implied status is considered valid status by operation of law.

All temporary residents who apply for an extension of their status under R181 have access to “implied status”.

181 (1) A foreign national may apply for an extension of their authorization to remain in Canada as a temporary resident if

- (a) the application is made by the end of the period authorized for their stay; and
- (b) they have complied with all conditions imposed on their entry into Canada

There is no discretion or decision made to give implied status it is done automatically by law.

I will draw your attention to the program delivery instructions related to Open work permit pilot program for permanent residence applicants in the spouse or common-law partner in Canada class (A70). IRCC Officers will issue open work permits to SCLPC class applicants if they meet the following requirements:

- the SCLPC class applicant has valid temporary resident status (as a visitor, student or worker), or is eligible to restore their temporary resident status, and has submitted the restoration application with their application for permanent residence;
- a permanent residence application has been submitted under the SCLPC class and is currently being processed, or has been received, by Immigration, Refugees and Citizenship Canada for processing;
- a Canadian citizen or permanent resident spouse has submitted a sponsorship application on their behalf;
- the SCLPC class applicant resides at the same address as the sponsor.

Temporary resident status is maintained by the application for an extension of authorized stay before the expiry of their present status and during implied status. It may be lost and restored; on restoration, the foreign national regains valid temporary resident status.

Question 3:

More specifically, does this client remain in valid status? (assuming the Open work permit is processed and approved. I'm not talking about instances where the application technically never existed because of errors made or incorrect fees paid).

Response:

Yes. The foreign national remains in valid status by operation of law until a decision is made on their open work permit application.

Question 4:

Does this client have to apply to extend their VISITOR status in order to remain in valid status? despite having applied to extend their temporary status in Canada, per S.183(5)(6) by way of a Work Permit application) Does anything change if the client is already in Canada on valid status as a WORKER prior to the submission of the SCLPC + IMM5710 application? (Apart from the fact that because they are going from Worker to Worker, they can keep working until a decision is made on the extension application).

Response:

No. As indicated above, "status" and "authorization" are separate in the Immigration and Refugee Protection Act (IRPA). A foreign national who submits the "Application to change conditions, extend my stay or remain in Canada as a Worker" application form [IMM 5710] is in effect submitting two applications in one.

In the case of an SCLPC applicant who entered Canada as a visitor and is now applying for an open work permit, the foreign national is applying under section R181 for an extension of status. They are also making an initial work permit application under section R199(f) which effectively requests authorization to change their class to include permission to work.

In the case of an SCLPC applicant who is already in Canada as a worker, there is little change. The foreign national is applying under section R181 for an extension of status and under section R201 to change conditions of their stay as a worker.

We trust this information will assist you.

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Sincerely,

The Immigration Representatives Mailbox

-----Original Message-----

From:

Sent: February 7, 2018 4:18 PM

To: Immigration Representatives / Représentants immigration (IRCC) <IRCC.ImmigrationRepresentatives-Representantsimmigration.IRCC@cic.gc.ca>

Subject: Implied Status

Hello,

I'm sure you get this question quite often, but there is a great deal of misunderstanding around implied status, both for the general public and within representative circles. I apologize for the question, but am hoping for some clarity.

The broad question:

If a Foreign National in Canada with valid temporary resident status applies to extend the period authorized for their stay, per IRPR section 183(5)(a&b) will they benefit from Implied Status by operation of S.183(6) REGARDLESS of what type of temporary resident status (worker, student, visitor) they hold when they apply to extend, and what type of temporary status they are applying for with the extension?

A secondary question that arises from the first question:

Is implied Status considered Valid Status generally, and more specifically for the purposes of an Inside Canada Class SCLPC application that includes an application for an open work permit under the Spousal open work permit pilot program?

Possible scenario: (assuming that the Work Permit application is complete and the correct fees are paid)

A principal applicant who has valid VISITOR status in Canada, applies within the SCLPC class and includes a Work Permit application. Their SCLPC application was received by a processing office BEFORE their Visitor Status expired. Their Visitor status expires PRIOR to issuance of the Open Work Permit. Is this hypothetical client still eligible to benefit from the 4 month processing of the open work permit, by virtue of having applied to extend their temporary status in Canada prior to the expiry of their current temporary status in Canada?

More specifically:

Does this client remain in valid status? (assuming the Open work permit is processed and approved. I'm not talking about instances where the application technically never existed because of errors made or incorrect fees paid). Does this client have to apply to extend their VISITOR status in order to remain in valid status? (despite having applied to extend their temporary status in Canada, per S.183(5)(6) by way of a Work Permit application) Does anything change if the client is already in Canada on valid status as a WORKER prior to the submission of the SCLPC + IMM5710 application? (Apart from the fact that because they are going from Worker to Worker, they can keep working until a decision is made on the extension application)

There are many social media groups for spousal sponsorship applicants that are telling their members that a.) Implied status IS NOT valid status so you can't benefit from the pilot program if you're on implied status, and b.) That

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applicants must apply to extend their temporary status' in addition to the submission of an IMM5710 with the SCLPC application. This results in thousands of applications for visitors extensions being sent to IRCC.

I'm hearing - anecdotally - of many applicants who are not granted faster work permit processing per the pilot program. These individuals were visitors and thought that by including an IMM5710 in their application to extend their temporary resident status they were complying with the requirement to remain in Valid Status. It seems that officers are not of this opinion and are advising these individuals that they have lost their status and must apply to restore it if they can. If these folks find themselves out of status for this reason, they must then wait for AIP for their work permits to be processed.

It seems to me that clarity provided on this subject would benefit all stakeholders - including IRCC - in that there would be several thousand less unnecessary applications for visitor extension applications to process, if temporary status is valid temporary status by operation of S.183 REGARDLESS of what TYPE of temporary status it is, and if that were made very clear - in layman's terms - to the public.

I look forward to your reply!

Many thanks,