

## **NEW DIRECTIVES FOR IMPLIED STATUS**

by Kenneth Ing

As of January 15, 2009, Operational Bulletin 092 provided new directives on “implied status” in order to avoid any disruption to the status of a foreign national who applied to extend their temporary resident status or to renew their work or study permit and a decision is not made before their previous status expires. The applicable regulations in the Immigration and Refugee Protection Regulations include R. 183(5) and (6) for temporary residents, R. 186(u) for workers and R. 189 for students.

The issue of “implied status” has posed many challenges to applicants as a result of inconsistencies in the manner in which the regulations that deal with this issue have been implemented in relation to foreign nationals who leave Canada after they have applied for renewal, but before the decision has been rendered on their application to renew.

The Inland Processing Manual Chapter 6 at Section 5.5 indicates that a temporary resident must apply to renew their status before it expires. If this is done, their original temporary status, whether as a visitor, student, or worker, continues until a decision is made and they are notified. If they leave Canada, their status as a temporary resident expires upon leaving. If the person applied for a renewal of a work or study permit and their status expired before a decision is made, they have the right to continue working and studying under the same conditions only if the person remains in Canada. If the person leaves Canada, upon returning at a Port of Entry, if no decision has been made, the person must re-apply at the Port of Entry if they have the right to do so. Alternatively, the visitor may re-apply outside Canada if they do not qualify for application at a Port of Entry. If a renewal of the person’s work or study permit has been issued, the person may be authorized to enter as a temporary resident and will have the right to work or study in accordance with the conditions of the issued permit.

The Enforcement Manual Chapter 4, Section 13.2 currently states that temporary residents seeking re-entry from the USA or St. Pierre and Miquelon, after applying to renew their original status, may remain under their original status until a decision is made and they are notified.

In order to address these inconsistencies, the wording on “implied status” has been relocated to the Overseas Processing Manual Chapter 11, Section 23.6 and indicates the following:

“A temporary resident must apply to extend their period of authorized stay before it ends. If they have done so, their period of authorized stay as a temporary resident is extended by law until a decision is made (R. 183(5)). The person is considered to have “implied status” as a temporary resident during that period.

If a temporary resident applies for a renewal of their work or study permit and their permit expires before a decision is made, R. 186(u) and R. 189 (the right to continue working or studying under the same conditions pending a determination of their application for renewal) apply only as long as the person remains in Canada.”

A temporary resident with implied status who has left Canada may be allowed to re-enter Canada as a temporary resident, pending a decision on the renewal of their application to study or work in Canada, provided they are temporary resident visa exempt as per R. 190 or on a multiple entry visa. They may not resume work or study in Canada until their application for renewal has been granted. For those not able to resume work, they must satisfy the Port of Entry officer that they have sufficient means of support. Alternatively, they may be allowed to apply for a new work or study permit at the Port of Entry, provided they have a right to do so under the Regulations.