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A Citizenship and Immigration Law Firm

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Family Relationships in Immigration Law

Canada

Synopsis

- 1) Canada's definition of family includes basic Judeo-Christian traditional elements and updated concepts which resonate with changes in family law in Canada;
- 2) As a general rule spouses and dependent children receive priority processing, regardless of financial or medical circumstances.

Spouses

- ❑ Includes married, common law and conjugal partners
- ❑ Spouses must be 16 or older
- ❑ Same sex couples receive equal treatment under the law
- ❑ Polygamy is disallowed
- ❑ Legality of Marriage
- ❑ Capacity, consanguinity/adoption rules (mother/father, grandfather/grandmother, brother/sister, half-siblings, son/daughter, grandson, granddaughter and other lineal relatives)



Common Law Spouses

A common law partner means,

“in relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having cohabited for a period of at least one year”.

Common Law Spouses

- ❑ Spouses living together (in one dwelling) as a couple
- ❑ Evidence of continuous (not intermittent) co-habitation required
- ❑ Visa office or inland processing
- ❑ Cohabitation generally required if no immigration barrier
- ❑ Co-habitation outside Canada must be accompanied with proof of intention to return to Canada upon issuance of landed immigrant visa.

Conjugal Partner

Conjugal partner means “in relation to a sponsor, a foreign national residing outside Canada who is in a conjugal relationship with the sponsor and has been in that relationship for a period of at least one year.”

Conjugal Partners

- ❑ Generally, visa office application (sponsored spouse has immigration barrier)
- ❑ Relationship proof threshold is greater
- ❑ Generally permanent
- ❑ Interdependent (financially, socially, emotionally and physically)
- ❑ Commitment to a shared life, exclusive, intimate
- ❑ De facto replacement of fiancé category



Persons With Sex Changes

- ❑ Under law retain the sex they had at birth
- ❑ A marriage to someone of the opposite sex is recognized
- ❑ Same sex couples can apply under conjugal or common law guidelines
- ❑ Not compatible with more general CIC policies

Same Sex Marriages

1. Extended throughout Canada July 20, 2005
2. In Canada marriages recognized
3. Marriage Certificate must be issued
4. Marriages outside Canada not recognized for immigration purposes - Canadians may sponsor their spouses as common law or conjugal partners

Children

- ❑ Natural and adopted children can be included as members of the family class.
- ❑ General rule: Child is dependent until 22 years, unless married or a common law partner.
- ❑ If older than 22 years of age, must be continuously enrolled in full time study since the age of 22.
- ❑ Dependent children of accompanying dependent child;
- ❑ Dependent children over the age of 22 years and unable to financially self-support due to a physical or mental condition.
- ❑ Rules apply at the time of application and visa issuance.

Human Reproductive Technologies

‘Biological child’ also includes:

1. A child not genetically related to the parent making the application;
 2. Was born through the application of assisted human reproductive technologies (i.e.. in vitro); and
 3. Was born to the parent making the application or the person who, at the time of birth of the child, was the parent’s spouse/common law/conjugal partner.
- Parent who gives birth is presumed the parent regardless of genetics.
 - Surrogacy requires a subsequent legal adoption.

Bars To Sponsorship

- Relationships of convenience
- Illegal Marriage
 - Defects in capacity
 - Age (can be cured)
 - Legal validity in original jurisdiction and Canadian law
- Polygamous Marriages (first marriage may be valid if monogamous from the time of arrival to Canada)
 - Divorce from additional spouses
 - Remarriage valid under Canadian law

Adoptions

- ❑ Children under 18
- ❑ Compliance with Hague and Province
- ❑ Home Study
- ❑ Application of permanent residence
- ❑ Application for citizenship



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How to sponsor other relatives?

Who qualifies for sponsorship?



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-
- ❑ Parents;
 - ❑ Grandparents;
 - ❑ Single orphans under 18 who are siblings, nieces, nephews, grandchildren;
 - ❑ One relative, regardless of age, where the sponsor does not have any family in Canada.

Sponsorship Requirements

- o LICO
- o Medicals
- o Other aspects of immigration compliance
- o Processing not prioritized
- o Accompanying dependents



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