
SPONSORING A SPOUSE OR COMMON-LAW PARTNER WHO IS IN CANADA

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Navigating the immigration process for your spouse or common-law partner who is in Canada but not a Canadian citizen or permanent resident can be complicated. Several years ago, Citizenship and Immigration Canada (CIC) introduced amendments to the Spouse or Common Law Partner in Canada Class immigration policy which allows eligible spouses and common-law partners of permanent residents, even those who have no status in Canada, to apply for permanent residence from within Canada rather than the normal “Overseas Sponsorship” process. It may seem that the optimal process to take in obtaining permanent residence for a spouse or common-law partner in Canada is the “In Canada” sponsorship process. However, there are many factors to consider before sending the sponsorship application.

Although most out-of-status spouses and common-law partners may remain in Canada while their application is being processed, it is important to consult with an immigration lawyer to determine that you are eligible to make the application under the “In Canada” class policy; and if you do qualify to make the application, whether an administrative or statutory deferral of removal will be granted in your case should the need arise.

While the “In Canada” sponsorship may be a viable route for some spouse and common-law partner sponsorships, applicants who are currently in Canada may still submit applications under the usual “Overseas Sponsorship” processing. The sponsored spouse does not have to be living overseas to access the visa post responsible for their country of citizenship or legal residence. All overseas spousal and common-law sponsorship applications are first submitted to the Case Processing Centre (CPC) in Mississauga, where the sponsor’s eligibility as a sponsor is assessed and usually takes anywhere from 30-60 days. The overseas Canadian visa office that is responsible for applications in the spouse or common law partner’s country of citizenship or legal permanent residence then finalizes the applicant spouse’s application.

There are some important differences between the “In Canada” applications and the “Overseas Sponsorship” spouse or common-law sponsorship applications. In many cases, the “In Canada” sponsorship application takes longer to process than a sponsorship processed at an overseas visa office. For example, a straightforward spousal sponsorship processed through the Canadian High Commission in New Delhi, India takes approximately six months to finalize without an interview; whereas the same application processed in Canada presently takes about nine months for the first stage of approval. It can take another nine months for the application to be finalized. Moreover, during those initial months of “processing”, there is no confirmation or file number to indicate that CIC have received the file and started processing. This first stage of approval for an “In Canada” sponsorship does allow the sponsored spouse to apply for a work permit while awaiting the finalization of the permanent residence. However, not all cases receive the initial approval at first instance. Where there are concerns regarding the genuineness of the relationship, applications may be transferred to a local CIC office where an interview may be convoked, which adds further delays to the overall processing time.

Most notably is the difference in the sponsor's right to appeal a refusal. If a sponsorship application is refused under the "In Canada" policy, there is no right of appeal by the sponsor to the Immigration Appeal Division (IAD) for applications made based on the In Canada policy, although the decision might be challenged in the Federal Court. Refused in-Canada applications would have to pay application fees again and submit a new sponsorship application for permanent residence to be processed at a visa office overseas. In contrast, sponsors may appeal a refusal of an overseas spousal sponsorship application to the IAD. If the appeal is successful, the visa post is ordered to continue the processing of the file.