

## IMMIGRATION LAW

# Permits allow foreign nationals entry in spite of medical inadmissibility

By Taiwo Olalere

One of the objectives of the *Immigration and Refugee Protection Act* (IRPA) is to protect the health and safety of Canadians.

To achieve this important objective, almost all foreign nationals who apply to come to Canada on a temporary or permanent residence basis are required to undergo medical examinations. This also includes foreign nationals who are already within Canada.

With a few exceptions, if the medical examination shows that the foreign national has a health condition that is likely to be a danger to public health or public safety or might reasonably be expected to cause excessive demand on health or social services, the foreign national would be found medically inadmissible under s. 38 of the IRPA.

However, in certain situations, a foreign national may be granted entry into Canada or allowed to continue to remain in Canada, irrespective of the individual's medical inadmissibility.

Section 24(1) of the IRPA gives an officer the authority to issue a Temporary Resident Permit

(TRP), regardless of the fact that the foreign national is inadmissible or does not meet the requirements of the IRPA. It reads as follows:

"A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time."

The broad language of the above section allows the officer to consider all the circumstances of the foreign national and make a determination. This gives counsel the opportunity to present all the circumstances of the foreign national to the officer, including any supporting documents that would be helpful to the case.

Depending on the client's situation, there may be more than one legal issue to address in the submission to the officer. For

example, a foreign national who is in Canada, has a health condition, and has since fallen out of status would have violated other provisions of the IRPA such as s. 41 for non-compliance with the Act. Hence, these types of cases can be problematic if a strategic approach is not developed at the outset and all the legal issues are not canvassed.

**"Counsel should gather information on the client's medical condition, education, employment, marital status, family members inside and outside Canada, community involvement, criminal record, ties to Canada and other pertinent information."**

From the initial meeting, counsel should gather information on the client's medical condition, education, employment, marital status, family members inside and outside Canada, community involvement, criminal record, ties to Canada and other pertinent information.

Moreover, counsel should gather information on the availability and accessibility of medical

facilities in the home country, the state of the health care system in the home country, and medical and newspaper articles on the adequacy of treatment or non-treatment of the medical condition in the home country.

Other documentation such as letters from specialists will be necessary to support the TRP request. Among other things, it should comment on whether medical facilities are available or accessible in the home country and whether the client's life is likely to be cut short by his or her return to the home country.

Counsel should be aware that there is no application form for requesting an initial TRP within Canada. However, IMM1249E forms may be completed for information purposes. Officers will rely on the submissions and supporting documents presented to them.

Also, counsel should be aware that an officer will closely scrutinize a request for TRP of six months duration or more. This is because it gives additional privileges to the individual. It allows the foreign national to apply for a work permit and study permit from within Canada.

Section 208(b) of the *Immigration and Refugee Protection Regu-*

lations (IRPR) allows the TRP holder to apply for a work permit. It reads as follows:

"A work permit may be issued under section 200 to a foreign national in Canada who cannot support themselves without working, if the foreign national holds a temporary resident permit issued under subsection 24(1) of the Act that is valid for at least six months."

Section 215(1)(e) of the IRPR allows the TRP holder to apply for a study permit from within Canada. It states:

"A foreign national may apply for a study permit after entering Canada if they hold a temporary resident permit issued under subsection 24(1) of the Act that is valid for at least six months."

A TRP holder who remains in Canada for three years and who does not become inadmissible on other grounds can also apply for permanent residence from within Canada. There is no discretion in granting permanent residence to those who meet the requirements and do not become inadmissible on other grounds.

Some of the factors that officers will consider in assessing TRP requests can be found in the CIC IP1 Manual.

Even though clients may be medically inadmissible, all hope is not lost. TRP may be a way out.

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## Prosecution of serious criminals can use ordinary *Code* provisions

GANGS

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her participation is minor or even marginal. Even if bail is eventually granted, it is often on strict conditions. This imposes substantial responsibilities on the families of the accused for what can be years of supervision.

Legal Aid retainers resulting from these prosecutions impose a major strain on that organization because of the vast quantities of disclosure needing to be reviewed by many counsel. Legal Aid is often completely unable to provide funding for preparation hours which would allow a complete review of all of the necessary disclosure.

It is not at all unusual for Legal Aid to tell counsel that the number of hours which are clearly merited on a given file cannot be granted because of the cost. For example, prosecutions can have thousands of hours of wiretaps or dozens of banker's boxes of material. There is no current prospect that Legal Aid will receive the budget to

allow counsel the funding to review this disclosure. Counsel are reliant on Crown's assessment of the "relevant disclosure" and the "relevant calls" because the disclosure cannot be reviewed in its entirety.

Another concern involves the large number of marginally involved persons enmeshed in these prosecutions. If bail is not granted, the lesser players easily face situations where they will be offered sentences lower than the amount of time they would serve awaiting a trial on the merits years down the road.

This places an accused in a diffi-

cult situation. They can plead guilty to a criminal organization offence, which will no doubt have immediate and lasting consequences on their future employment, or they can stay in jail for a length of time inordinately higher than their level of criminal respon-

sibility.

Further, even if a person has become involved to a certain degree with others in a "gang" lifestyle, criminalization of this nature probably only has the effect that upon release, he or she will not be able to find legitimate employment.

Many young black men and women have been charged for assisting "organizations" which consist of the other young men in their immediate neighbourhood. The line between doing a crime with a public school buddy or next door neighbour, and "commission of an offence for a criminal organization" is not a bright one.

Using the new "gang" provisions to prosecute very large numbers of people is a new phenomenon in Toronto. It is not at all clear that its effect will be less crime or more justice. Serious criminals can be effectively prosecuted using the ordinary provisions of the *Criminal Code*. Lesser players can be seriously harmed before and after trial by being prosecuted in this fashion.

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## It's just about dirty money

FORFEITURE

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tually all crime produces some financial benefit, any part of which is capable of falling to a forfeiture action. Any victim can sue an alleged perpetrator (though they cannot sue criminal property) to receive compensation.

In substance, if not in form, the new power grossly exceeds any bit of customs law with which it happens to share a semantic origin. And will the owners of Jaguars and jewels really be relieved that the legal process leaves them unscathed since it merely forfeits their property?

Criticisms of legal method aside, it is difficult to find any principled reasons that courts ought to toss out these kind of civil forfeiture regimes — after all, it's just about dirty money.

Leave to appeal in *Chatterjee* has been filed.

Michelle Gallant is a professor in the faculty of law at the University of Manitoba.



Gang prosecutions flourish in Toronto: ©istockphoto.com/sasodo